

FILED

MAR 16 2010

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of) No. H-10463 SF
)
HARRY ESTRADA PACHECO,)
)
Respondent.)

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

(Professional Responsibility Examination)

TO: HARRY ESTRADA PACHECO ("Respondent"):

On June 22, 2009, a restricted real estate salesperson license was issued by the Department of Real Estate to Respondent on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Decision effective June 17, 2009, in Case No. H-10463 SF. This Decision granted the right to the issuance of a restricted real estate salesperson license subject to the provisions of Section 10156.7 of the Business and Professions Code of the State of California, and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of said Code. Among those terms and conditions, the Decision required Respondent to take and pass the Professional Responsibility Examination (hereinafter "the condition") within six (6) months after June 17, 2009, the effective date of the Decision, and

1 provided that if Respondent failed to satisfy this condition, the Commissioner may order
2 suspension of the restricted license until Respondent passes the examination.

3 As of December 17, 2009, Respondent has failed to submit proof satisfactory to
4 the Commissioner of successfully passing the above-ordered examination. The Commissioner
5 has determined that Respondent has failed to satisfy this condition, and as such, that
6 Respondent's license may be suspended until Respondent satisfies this condition.

7 NOW, THEREFORE, IT IS ORDERED under authority of Section 10156.7 of the
8 Business and Professions Code of the State of California that Respondent's restricted real estate
9 salesperson license and the exercise of any privileges thereunder is hereby suspended until such
10 time as Respondent provides proof satisfactory to the Commissioner of compliance with the
11 condition referred to above, or pending final determination made after hearing (see "Hearing
12 Rights" set forth below).

13 IT IS FURTHER ORDERED that all license certificates and identification cards
14 issued by the Department of Real Estate which are in the possession of Respondent be
15 immediately surrendered by personal delivery or by mailing in the enclosed self-addressed,
16 stamped envelope:

17 DEPARTMENT OF REAL ESTATE
18 ATTN: Flag Section
19 P. O. Box 187000
Sacramento, CA 95818-7000

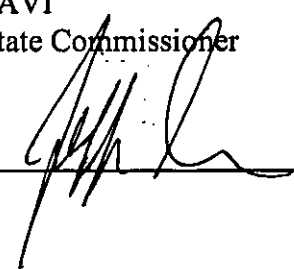
20 HEARING RIGHTS: You have the right to a hearing to contest the
21 Commissioner's determination that you are not in compliance with this condition. If you desire a
22 hearing, you must submit a written request. The request may be in any form, as long as it is in
23 writing and indicates that you want a hearing. Unless a written request for a hearing, signed by
24 or on behalf of you, is delivered or mailed to the Department, Legal Section, at 2201 Broadway,
25 P. O. Box 187007, Sacramento, California 95818-7007, within twenty (20) days after the date
26 that this Order was mailed to or served on you, the Department will not be obligated or required
27 to provide you with a hearing.

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This Order shall be effective immediately.

DATED: 3/3/2010

JEFF DAVI
Real Estate Commissioner



FILED

MAY 27 2009

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	
	)	NO. H-10463 SF
ROMEO FELISCO ALVIDERA and	)	
HARRY ESTRADA PACHECO,	)	OAH NO. 2008100100
	)	
Respondents.	)	

STIPULATION AND AGREEMENT
AND DECISION AFTER REJECTION AS TO
RESPONDENT HARRY ESTRADA PACHECO ONLY

The matter came on for hearing before Steven C. Owyang, Administrative Law Judge (hereafter ALJ) of the Office of Administrative Hearings, on January 28, 2009, in Oakland, California.

John Van Driel, Counsel, and law student Emily Foehr represented the Complainant.

Respondent HARRY ESTRADA PACHECO (hereafter Respondent) was present and represented himself. The matter was submitted on January 28, 2009.

On February 11, 2009, the ALJ rendered a Proposed Decision. On March 16, 2009, the Department declined to adopt as the Decision herein. Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of

1 the determination not to adopt the Proposed Decision of the ALJ along with a copy of said
2 Proposed Decision. Respondent was notified that the case would be decided by the
3 Commissioner upon the record, the transcript of proceedings held on the above date, and upon
4 any written arguments offered by Respondent and Complainant, pursuant to Section 11517(c) of
5 the Government Code. The parties thereafter entered into settlement negotiations.

6 It is hereby stipulated by and between Respondent, and the Complainant, acting
7 by and through John VanDriel, Counsel for the Department of Real Estate, as follows for the
8 purpose of settling and disposing of the Accusation filed on June 23, 2009:

9 1. Respondent acknowledges that he understands that by entering into this
10 Stipulation and Agreement, he will thereby waive the right to further proceeding herein under the
11 provisions of the Administrative Procedure Act relating to hearings, including but not limited to
12 the right require the Commissioner to review the record herein, including the transcript of
13 proceedings held on the above date, and any written arguments offered by Respondent and
14 Complainant, pursuant to Section 11517(c) of the Government Code.

15 2. This Stipulation is based on the Factual Findings and Legal Conclusions of the
16 ALJ contained in the Proposed Decision rendered on February 11, 2009 and incorporated herein
17 as Exhibit "A". In the interests of expedience and economy, Respondent and Complainant
18 choose not to contest the Factual Findings in the Proposed Decision and agree that the Findings
19 of Fact set forth below will serve as the basis for the disposition stipulated to herein. Respondent
20 and the Real Estate Commissioner shall not be required to provide further argument or evidence
21 to support or refute said Findings of Fact.

22 3. It is understood by the parties that the Real Estate Commissioner may adopt
23 the Stipulation and Agreement as the decision in this matter thereby imposing the disposition on
24 Respondent's real estate license and/or license rights as set forth in the below "Order". In the
25 event that the Commissioner in his discretion does not adopt the Stipulation and Agreement, it
26 shall be void and of no effect.
27

1 4. The Order or any subsequent Order of the Real Estate Commissioner made
2 pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger, or bar to any
3 further administrative or civil proceedings by the Department of Real Estate with respect to any
4 matters that were not specifically alleged to be causes for accusation in this proceeding.

5 5. By reason of the foregoing stipulations, admissions and waivers, and for the
6 purpose of settlement of the pending Accusation after the Commissioner's rejection of the
7 Proposed Decision rendered March 16, 2009, it is stipulated and agreed that the following Order
8 shall be made:

9 DECISION AND ORDER

10 A. All real estate license(s) and license rights of Respondent HARRY
11 ESTRADA PACHECO are hereby revoked.

12 B. A restricted real estate salesperson license shall be issued to Respondent
13 pursuant to Section 10156.6 of the Code, if he makes application therefor and pays to the
14 Department of Real Estate the appropriate fee for said license within ninety (90) days from the
15 effective date of the Decision.

16 C. The restricted license issued to Respondent shall be subject to all of the
17 provisions of Section 10156.7 of the Business and Professions Code and to the following
18 limitations, conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

19 (1) The restricted license issued to Respondent may be suspended prior to
20 hearing by Order of the Real Estate Commissioner in the event of
21 Respondent's conviction or plea of nolo contendere to a crime which is
22 substantial related to Respondent's fitness or capacity as a real estate
23 licensee.

24 (2) The restricted license issued to Respondent may be suspended prior to
25 hearing by Order of the Real Estate Commissioner on evidence
26 satisfactory to the Commissioner that Respondent has violated
27 provisions of the California Real Estate Law, the Subdivided Lands Law,

1 Regulations of the Real Estate Commissioner or conditions attaching to
2 the restricted license.

3 (3) Respondent shall not be eligible to apply for the issuance of an

4 unrestricted real estate license, nor the removal of any of the
5 conditions of the restricted license, until two (2) years have elapsed
6 from the effective date of this Decision.

7 (4) Respondent shall submit with any application for license under an
8 employing broker, or any application for transfer to a new employing
9 broker, a statement signed by the prospective employing real estate
10 broker on a form approved by the Department of Real Estate which
11 shall certify:

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

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

18 (5) Respondent shall, within nine (9) months from the effective date of this

19 Decision, present evidence satisfactory to the Real Estate Commissioner
20 that Respondent has, since the most recent issuance of an original or
21 renewal real estate license, taken and successfully completed the
22 continuing education requirements of Article 2.5 of Chapter 3 of the
23 Real Estate Law for renewal of a real estate license. If Respondent fails
24 to satisfy this condition, the Commissioner may order the suspension of
25 the restricted license until the Respondent presents such evidence. The
26 Commissioner shall afford Respondent the opportunity for hearing
27 pursuant to the Administrative Procedure Act to present such evidence.

1 (6) Respondent shall, within six (6) months from the effective date of this
2 Decision, take and pass the Professional Responsibility Examination
3 administered by the Department including the payment of the appropriate
4 examination fee. If Respondent fails to satisfy this condition, the
5 Commissioner may order suspension of Respondent's license until
6 Respondent passes the examination.

7 (7) Any restricted license issued to Respondent pursuant to this Stipulation
8 and Agreement and Decision After Rejection shall be suspended for thirty
9 (30) days from the date of issuance of said restricted license.

10 3-27-09

11 DATED

12 John Van Driel

13 JOHN VAN DRIEL, Counsel
14 DEPARTMENT OF REAL ESTATE

15 * * *

16 I have read the foregoing Stipulation and Agreement and Decision After
17 Rejection, and its terms are understood by me and are agreeable and acceptable to me. I
18 willingly and voluntarily agree to enter into this Stipulation.

19 March 24, 2009

20 DATED

21 Harry Estrada Pacheco

22 HARRY ESTRADA PACHECO
23 Respondent

24 * * *

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

26 JUN 17 2009

27 IT IS SO ORDERED

5/15/09

JEFF DAVI
Real Estate Commissioner

Jeff Davi

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA



In the Matter of the Accusation of:

ROMEO FELISCO ALVIDERA and
HARRY ESTRADA PACHECO,

Respondents.

Case No. H-10463 SF

OAH No. 2008100100

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on January 28, 2009.

John Van Driel, Counsel, and law student Emily Foehr represented complainant E.J. Haberer II, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Respondent Romeo Felisco Alvidera did not appear.

Respondent Harry Estrada Pacheco was present and represented himself.

At the commencement of the hearing, complainant stated that a tentative settlement had been reached with regard to respondent Alvidera. Thus, complainant proceeded only as to the allegations regarding respondent Pacheco.

The matter was submitted on January 28, 2009.

FACTUAL FINDINGS

1. Complainant E.J. Haberer II, Deputy Real Estate Commissioner, issued the accusation in his official capacity.
2. On April 5, 2007, the department issued to respondent Harry Estrada Pacheco (respondent) a conditional restricted real estate salesperson license. Respondent received a restricted license because of a reckless driving conviction.
3. In June 2007, respondent worked for broker Romeo F. Alvidera. Respondent represented Lewis Dukes regarding the prospective purchase of real property at 3541 Wells Road, Oakley, California, from sellers Thomas and Kathleen Housel. In a June 11, 2007

purchase offer, respondent knowingly misrepresented to the Housels that Dukes had given him a \$2,000 deposit by personal check payable to New Century Title. In fact, Dukes had written no such check and respondent had received no such check or other form of payment.

4. Respondent did not receive a \$2,000 check from Dukes until June 15, 2007. Dukes, however, began to get "cold feet" about the prospective purchase and eventually decided not to purchase the property.

5. At the time of the above events, respondent had been licensed for about two months. At hearing, respondent acknowledged that he lied when he represented that he had received the deposit check. He did so to make the prospective purchaser's offer appear stronger. He also said he had received very little training from his broker at the time.

6. Respondent currently works under the supervision of broker Willie Salgado. Salgado, who was a witness at hearing, provides weekly training to his salespersons. Respondent has received training in trust funds, contracts, and ethics during weekly training at Salgado's office. Salgado is "very strict" with his salespersons, and regularly reviews respondent's work. There have been no discrepancies in the transactions respondent has handled while working for Salgado.

7. Salgado acknowledged that respondent should not have made the misrepresentation regarding the Wells Road property. Salgado, however, would be comfortable having respondent continue to work for him with a restricted license.

8. Respondent is remorseful about his conduct in the Wells Road matter. He now strives to handle transactions honestly and professionally.

LEGAL CONCLUSIONS

1. Respondent's conduct as described in Factual Finding 3 constituted the making of a substantial misrepresentation and dishonest dealing. Cause exists to suspend or revoke respondent's license and license rights pursuant to Business and Professions Code sections 10176, subdivision (a) (substantial misrepresentation), and 10177, subdivision (j) (fraud or dishonest dealing).

2. Respondent now works for a broker who provides him regular training and close supervision. He demonstrated a positive attitude and commitment toward conducting business honestly and professionally. There was no indication in the record that respondent is likely to repeat his past misconduct.

Complainant noted that respondent was very honest at hearing and that he has taken positive steps in rehabilitation. Complainant further asserts, however, that respondent's conduct was harmful to the public. Complainant asked that respondent's license be suspended or revoked.

The appropriate discipline in this matter is to allow respondent to practice under a restricted license, following a period of suspension.

3. No determinations are made regarding complainant's allegations as to Romeo Felisco Alvidera.

ORDER

All licenses and licensing rights of respondent Harry Estrada Pacheco under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to 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 restricted license within 90 days from the effective date of this decision. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that code:

1. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or 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.
4. 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 Department of Real Estate which shall certify:
 - (a) That the employing broker has read the decision of the commissioner which granted the right to a restricted license; and

- (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewed 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 he presents such evidence. The commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
6. Any restricted license issued to respondent pursuant to this decision shall be suspended for 30 days from the date of issuance of said restricted license.

DATED: February 11, 2009


STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

FILED

MAR 16 2009

DEPARTMENT OF REAL ESTATE

By 

1 DEPARTMENT OF REAL ESTATE

2 P. O. Box 187000

3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

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10 BEFORE THE DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA
12

13 In the Matter of the Accusation of)

DRE No. H-10463 SF

14 ROMEO FELISCO ALVIDERA,)
15 and HARRY PACHECO,)STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER16 Respondents.)
1718 It is hereby stipulated by and between ROMEO FELISCO ALVIDERA only
19 (hereinafter "Respondent"), acting by and through their attorney, Jill Bates-Moore of the Hanson
20 Law Firm; and the Complainant, acting by and through John Van Driel, Counsel for the
21 Department of Real Estate; as follows for the purpose of settling and disposing of the Accusation
22 filed on June 23, 2008, in this matter:23 1. All issues which were to be contested and all evidence which was to be
24 presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing
25 was to be held in accordance with the provisions of the Administrative Procedure Act ("APA"),
26 shall instead and in place thereof be submitted solely on the basis of the provisions of this
27 Stipulation and Agreement.

FILE NO. H-10463 SF

- 1 -

STIPULATION OF
ROMEO FELISCO ALVIDERA

1 2. Respondent has received, read and understand the Statement to Respondent,
2 the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate
3 in this proceeding.

4 3. On July 2, 2008, Respondent filed a Notice of Defense pursuant to Section
5 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the
6 Accusation. Respondent hereby freely and voluntarily withdraw said Notice of Defense.
7 Respondent acknowledges that he understands that by withdrawing said Notice of Defense he
8 will thereby waive his right to require the Commissioner to prove the allegations in the
9 Accusation at a contested hearing held in accordance with the provisions of the APA and that he
10 will waive other rights afforded to him in connection with the hearing such as the right to present
11 evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

12 4. Respondent, pursuant to the limitations set forth below, hereby admit that the
13 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are
14 true and correct and the Real Estate Commissioner shall not be required to provide further
15 evidence of such allegations.

16 5. It is understood by the parties that the Real Estate Commissioner may adopt
17 the Stipulation and Agreement as his Decision in this matter, thereby imposing the penalty and
18 sanctions on Respondent's real estate license and license rights as set forth in the below "Order".
19 In the event that the Commissioner in his discretion does not adopt the Stipulation and
20 Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing
21 and proceeding on the Accusation under all the provisions of the APA and shall not be bound by
22 any admission or waiver made herein.

23 6. The Order or any subsequent Order of the Real Estate Commissioner made
24 pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any
25 further administrative or civil proceedings by the Department of Real Estate with respect to any
26 matters which were not specifically alleged to be causes for accusation in this proceeding.

27 ///

1 7. Respondent understands that by agreeing to this Stipulation and
2 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the Business and
3 Professions Code, the cost of the audit which led to this disciplinary action. The amount of said
4 cost is \$4,997.58.

5 8. Respondent has received, read, and understands the "Notice Concerning
6 Costs of Subsequent Audits". Respondent understands that by agreeing to this Stipulation and
7 Agreement in Settlement, the findings set forth below in the DETERMINATION
8 OF ISSUES become final, and that the Commissioner may charge Respondent for the cost of any
9 audit conducted pursuant to Section 10148 of the Business and Professions Code to determine if
10 the violations have been corrected. The maximum costs of said audit will not exceed \$4,997.58.

11 DETERMINATION OF ISSUES

12 By reason of the foregoing stipulations, admissions and waivers, and solely for the
13 purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
14 that the acts and/or omissions of Respondent, as described in the Accusation, constitute grounds
15 for the suspension or revocation of the licenses and license rights of Respondent under the
16 provision of Section 2831 of Title 10, California Code of Regulations, and Sections 10176(f),
17 10177(d), 10177(g), 10177(h), 10240, and 10241 of the Business of Professions Code (the
18 Code).

19 ORDER

20 The real estate broker license and license rights of Respondent ROMEO
21 FELISCO ALVIDERA under the Real Estate Law are suspended for a period of ninety (90) days
22 from the effective date of this Order; provided, however, that if Respondent petitions, said
23 suspension (or a portion thereof) shall be stayed upon condition that:

24 1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the
25 Business and Professions Code at the rate of \$55.00 for each day of the suspension for a total
26 monetary penalty of \$4,950.00.

27 ///

1 2. Said payment shall be in the form of a cashier's check or certified check
2 made payable to the Recovery Account of the Real Estate Fund. Said check must be received by
3 the Department prior to the effective date of the Decision in this matter.

4 3. No further cause for disciplinary action against the real estate license of
5 Respondent occurs within one year from the effective date of the Decision in this matter.

6 4. If Respondent fails to pay the monetary penalty in accordance with the
7 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
8 immediate execution of all or any part of the stayed suspension in which event the Respondent
9 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
10 Department under the terms of this Decision.

11 5. If Respondent pays the monetary penalty and if no further cause for
12 disciplinary action against the real estate license of Respondent occurs within one (1) year from
13 the effective date of the Decision, the stay hereby granted shall become permanent.

14 6. Pursuant to Section 10148 of the Business and Professions Code,
15 Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this
16 disciplinary action and, b) a subsequent audit to determine if Respondent has corrected the trust
17 fund violations found in the Determination of Issues. In calculating the amount of the
18 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
19 for all persons performing audits of real estate brokers, and shall include an allocation for travel
20 costs, including mileage, time to and from the auditor's place of work and per diem. Respondent
21 shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner
22 detailing the activities performed during the audit and the amount of time spent performing
23 those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if
24 payment is not timely made as provided for herein, or as provided for in a subsequent agreement
25 between the Respondent and the Commissioner. The vacation and the set aside of the stay shall
26 remain in effect until payment is made in full, or until Respondent enters into an agreement
27 satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be

issued, either in accordance with this condition, the stay imposed herein shall become permanent.

7. Respondent shall submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

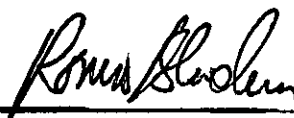
8. Respondent shall, within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

3-4-09
DATED


JOHN VAN DRIEL, Counsel
DEPARTMENT OF REAL ESTATE

I have read the Stipulation and Agreement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

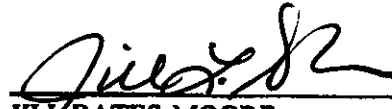
02/10/2009
DATED


ROMEO FELISCO ALVIDERA
Respondent

1 I have reviewed the Stipulation and Agreement in Settlement as to form and
2 content and have advised my client accordingly.

3 2.12.09

4 DATED

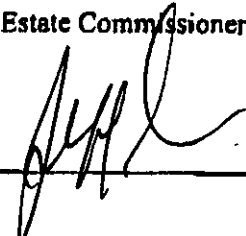
5 
JILL BATES-MOORE
Attorney for Respondent

6 ***

7 The foregoing Stipulation and Agreement is hereby adopted by the Real Estate
8 Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on
9 APR - 6 2009

10 IT IS SO ORDERED

11 2/12/09
12 JEFF DAVI
Real Estate Commissioner

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FILED

MAR 16 2009

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

ROMEO FELISCO ALVIDERA and
HARRY ESTRADA PACHECO,

Respondents.

No. H-10463 SF

OAH No. 2008100100

NOTICE

TO: HARRY ESTRADA PACHECO, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated February 11, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated February 11, 2009, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on January 28, 2009, and any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of January 28, 2009, at the Sacramento

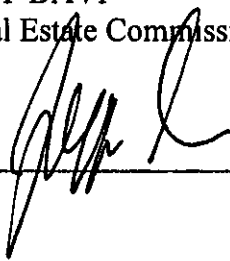
1 office of the Department of Real Estate unless an extension of the time is granted for good cause
2 shown.

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

6 DATED: _____

3/12/89

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8 JEFF DAVI
Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ROMEO FELISCO ALVIDERA and
HARRY ESTRADA PACHECO,

Respondents.

Case No. H-10463 SF

OAH No. 2008100100

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on January 28, 2009.

John Van Driel, Counsel, and law student Emily Foehr represented complainant E.J. Haberer II, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Respondent Romeo Felisco Alvidera did not appear.

Respondent Harry Estrada Pacheco was present and represented himself.

At the commencement of the hearing, complainant stated that a tentative settlement had been reached with regard to respondent Alvidera. Thus, complainant proceeded only as to the allegations regarding respondent Pacheco.

The matter was submitted on January 28, 2009.

FACTUAL FINDINGS

1. Complainant E.J. Haberer II, Deputy Real Estate Commissioner, issued the accusation in his official capacity.
2. On April 5, 2007, the department issued to respondent Harry Estrada Pacheco (respondent) a conditional restricted real estate salesperson license. Respondent received a restricted license because of a reckless driving conviction.
3. In June 2007, respondent worked for broker Romeo F. Alvidera. Respondent represented Lewis Dukes regarding the prospective purchase of real property at 3541 Wells Road, Oakley, California, from sellers Thomas and Kathleen Housel. In a June 11, 2007

purchase offer, respondent knowingly misrepresented to the Housels that Dukes had given him a \$2,000 deposit by personal check payable to New Century Title. In fact, Dukes had written no such check and respondent had received no such check or other form of payment.

4. Respondent did not receive a \$2,000 check from Dukes until June 15, 2007. Dukes, however, began to get "cold feet" about the prospective purchase and eventually decided not to purchase the property.

5. At the time of the above events, respondent had been licensed for about two months. At hearing, respondent acknowledged that he lied when he represented that he had received the deposit check. He did so to make the prospective purchaser's offer appear stronger. He also said he had received very little training from his broker at the time.

6. Respondent currently works under the supervision of broker Willie Salgado. Salgado, who was a witness at hearing, provides weekly training to his salespersons. Respondent has received training in trust funds, contracts, and ethics during weekly training at Salgado's office. Salgado is "very strict" with his salespersons, and regularly reviews respondent's work. There have been no discrepancies in the transactions respondent has handled while working for Salgado.

7. Salgado acknowledged that respondent should not have made the misrepresentation regarding the Wells Road property. Salgado, however, would be comfortable having respondent continue to work for him with a restricted license.

8. Respondent is remorseful about his conduct in the Wells Road matter. He now strives to handle transactions honestly and professionally.

LEGAL CONCLUSIONS

1. Respondent's conduct as described in Factual Finding 3 constituted the making of a substantial misrepresentation and dishonest dealing. Cause exists to suspend or revoke respondent's license and license rights pursuant to Business and Professions Code sections 10176, subdivision (a) (substantial misrepresentation), and 10177, subdivision (j) (fraud or dishonest dealing).

2. Respondent now works for a broker who provides him regular training and close supervision. He demonstrated a positive attitude and commitment toward conducting business honestly and professionally. There was no indication in the record that respondent is likely to repeat his past misconduct.

Complainant noted that respondent was very honest at hearing and that he has taken positive steps in rehabilitation. Complainant further asserts, however, that respondent's conduct was harmful to the public. Complainant asked that respondent's license be suspended or revoked.

The appropriate discipline in this matter is to allow respondent to practice under a restricted license, following a period of suspension.

3. No determinations are made regarding complainant's allegations as to Romeo Felisco Alvidera.

ORDER

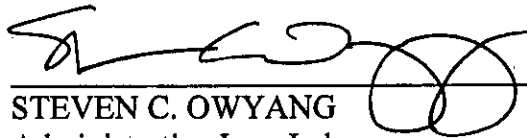
All licenses and licensing rights of respondent Harry Estrada Pacheco under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this decision. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that code:

1. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or 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.
4. 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 Department of Real Estate which shall certify:
 - (a) That the employing broker has read the decision of the commissioner which granted the right to a restricted license; and

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

5. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewed 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 he presents such evidence. The commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
6. Any restricted license issued to respondent pursuant to this decision shall be suspended for 30 days from the date of issuance of said restricted license.

DATED: February 11, 2009


STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

1 JEANINE K. CLASEN, Counsel (SBN 164404)
2 Department of Real Estate
3 P. O. Box 187007
Sacramento, CA 95818-7007

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5 -or- (916) 227-0868 (Direct)

FILED

JUN 23 2008

DEPARTMENT OF REAL ESTATE

By K. Max

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) No. H-10463 SF
13 ROMEO FELISCO ALVIDERA)
and HARRY ESTRADA PACHECO,) ACCUSATION
14 Respondents.)

15 The Complainant, E. J. HABERER, II, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against ROMEO FELISCO ALVIDERA (herein "ALVIDERA"),
18 and against HARRY ESTRADA PACHECO (herein "PACHECO"), is
19 informed and alleges as follows:

20 I

21 The Complainant, E. J. HABERER, II, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation in his official capacity.

24 II

25 At all times herein mentioned, Respondent ALVIDERA was
26 and now is licensed and/or has license rights under the Real

27 ///

1 Estate Law, Part 1 of Division 4 of the Code (herein "the Code")
2 as a real estate broker.

3 III

4 From approximately June 1, 2007 through the present,
5 ALCA Corporation ("ALCA") was and now is licensed by the
6 Department as a corporate real estate broker by and through
7 ALVIDERA as designated officer-broker of ALCA to qualify said
8 corporation and to act for said corporation as a real estate
9 broker. At all times herein mentioned, ALVIDERA owned, managed,
10 supervised and controlled the activities of ALCA and its agents
11 and employees.

12 IV

13 At all times herein mentioned, ALVIDERA was
14 responsible pursuant to Section 10159.2 of the Code for the
15 supervision of the activities and representations of the
16 officers, agents, real estate licensees and employees of ALCA.

17 V

18 Whenever reference is made in an allegation in this
19 Accusation to an act or omission of ALVIDERA, such allegation
20 shall be deemed to mean and include any act or omission by
21 employees, officers, agents and representatives acting by or on
22 behalf of ALVIDERA, and the acts or omissions by employees,
23 officers, directors, agents or associates acting by or on behalf
24 of ALCA, while engaged in the furtherance of the business or
25 operations of ALVIDERA and/or ALCA and while acting within the
26 course and scope of their authority and employment.

27 ///

1 VI

2 At all times herein mentioned, Respondent HARRY
3 ESTRADA PACHECO was and now is licensed and/or has license
4 rights under the Code as a real estate salesperson, and was
5 employed as a real estate salesperson by ALVIDERA.

6 VII

7 At all times herein mentioned, ALVIDERA and PACHECO
8 engaged in the business of, acted in the capacity of, advertised,
9 and/or assumed to act as a real estate broker within the State
10 of California within the meaning of Sections 10131(a) and
11 10131(d) of the Code, including:

12 (a) The operation and conduct of a real estate resale
13 brokerage with the public wherein, on behalf of others, for
14 compensation or in expectation of compensation, Respondents sold
15 or offered to sell, bought or offered to buy, solicited
16 prospective sellers or purchases of, solicited or obtained
17 listings of, and/or negotiated the purchase or sale of real
18 property; and

19 (b) The operation and conduct of a mortgage loan
20 brokerage business with the public wherein lenders and borrowers
21 were solicited for loans secured directly or collaterally by
22 liens on real property, wherein such loans were arranged,
23 negotiated, processed and consummated on behalf of others for
24 compensation or in expectation of compensation and/or wherein
25 such loans were serviced and payments thereon were collected on
26 behalf of others.

27 ///

VIII

Between approximately June 1, 2007 and July 1, 2007, PACHECO, while representing Lewis Dukes ("Dukes") in the prospective purchase of real property at 3541 Wells Road, Oakley, California ("the Wells Road Property") from sellers Thomas and Kathleen Housel ("the Housels"), solicited and obtained an agreement by the Housels to sell the Wells Road Property for the price of \$340,000 by representing, contrary to fact, that PACHECO had received a deposit from Dukes.

IX

In truth and fact, at the time PACHECO transmitted Dukes' purchase offer to the Housels, PACHECO did not have a deposit or any other form of payment from Dukes which could be deposited after acceptance of the purchase offer as required by the terms of Dukes' purchase offer, and PACHECO was aware of this fact.

X

The acts and omissions of PACHECO described in Paragraphs VIII and IX, above, constitute the making of a substantial misrepresentation and fraud and/or dishonest dealing, and are cause for the suspension or revocation of the licenses and license rights of PACHECO under Sections 10176(a) and 10177(j) of the Code.

XI

At all times mentioned herein, ALVIDERA failed to exercise reasonable supervision over the acts of PACHECO in such manner as to allow the acts and omissions of PACHECO, described

1 above, to occur, which is cause for the suspension or revocation
2 of the licenses and license rights of ALVIDERA under Section
3 10177(h) of the Code.

4 XII

5 On approximately March 7, 2007, ALVIDERA represented
6 Maria E. Santos ("Santos") in arranging and applying for
7 mortgage loans for the prospective purchase of two parcels of
8 residential real estate located at 275 Tahoe Court, Discovery
9 Bay, California ("the Tahoe Court Property") and at 2116-42nd
10 Avenue, Oakland, California ("the 42nd Avenue Property").
11 Though each application was executed on the same day, the
12 applications contain different and contradictory information
13 about Santos' "monthly base employment income", the balance in
14 Santos' Wells Fargo Bank account, the value of Santos' real
15 estate interests, the current market value of the 42nd Avenue
16 Property and the "gross rental income" from the 42nd Avenue
17 Property.

18 XIII

19 While representing Santos in the prospective purchase
20 of the Tahoe Court Property, as described in Paragraph XII,
21 above, ALVIDERA solicited and obtained an agreement from Andrey
22 Starzhevskiy and Lioudmila Movikova (the "Tahoe Court Sellers")
23 to sell said property for the price of \$620,000 by representing,
24 contrary to fact, that ALVIDERA had received a deposit from
25 Santos at the time the purchase offer was made. ALVIDERA was
26 aware at the time of making said representation that he had not
27 received a deposit or any other form of payment from Santos.

1 XIV

2 Between approximately October 1, 2006 and June 3,
3 2007, ALVIDERA represented Neil Fernandez ("Fernandez") in the
4 prospective purchase of residential real property at 4525
5 Darcelle Drive, Union City, California ("the Darcelle Drive
6 Property"), ALVIDERA solicited and obtained an agreement from
7 Henry G. Lewis and Joan U. Lewis ("the Darcelle Drive Sellers")
8 to sell said property for the price of \$700,000 by representing,
9 contrary to fact, that ALVIDERA had received a deposit from
10 Fernandez at the time the purchase offer was made. ALVIDERA was
11 aware at the time of making said representation that he had not
12 received a deposit or any other form of payment from Fernandez.

13 XV

14 The acts and omissions of ALVIDERA described in
15 Paragraphs XII through XIV, above, constitute the making of
16 substantial misrepresentations, fraud and/or dishonest dealing,
17 and are cause for the suspension or revocation of the licenses
18 and license rights of ALVIDERA under Sections 10176(a) and
19 10177(j) of the Code.

20 XVI

21 In acting as a real estate broker, ALVIDERA accepted
22 or received funds in trust (herein "trust funds") from or on
23 behalf of lenders, investors, borrowers, buyers, sellers and
24 others in connection with the mortgage loan brokerage activities
25 described in Paragraph VII, above, and thereafter from time to
26 time made disbursements of said trust funds.

27 ///

1 XVII

2 Between approximately October 1, 2006 and June 30,
3 2007, in connection with the mortgage loan brokerage and trust
4 fund-handling activities described above, ALVIDERA failed to
5 keep a columnar record in chronological sequence of all trust
6 funds received and not placed in a broker's trust account as
7 required by Section 2831 of Title 10, California Code of
8 Regulations ("the Regulations") and in violation of Sections
9 10177(d) and/or 10177(g) of the Code.

10 XVIII

11 Between approximately October 1, 2006 and June 30,
12 2007, in connection with the mortgage loan brokerage and trust
13 fund-handling activities described above, ALVIDERA claimed or
14 received a fee, compensation, or commission under an exclusive
15 agreement authorizing or employing a licensee to perform any
16 acts set forth in Section 10131 of the Code for compensation or
17 commission where the agreement in connection with the real
18 property at 2616 Leeward Street, Hayward California did not
19 contain a definite, specified date of final and complete
20 termination, in violation of Section 10176(f) of the Code.

21 XIX

22 Between approximately October 1, 2006 and June 30,
23 2007, in connection with the resale and mortgage loan brokerage
24 and trust fund handling activities described above, ALVIDERA
25 failed to provide mortgage loan disclosure statements and good
26 faith estimates containing all of the required information

27 ///

1 pursuant to Sections 10236.4 and 10240 of the Code for the
2 following loan transactions in violation of Sections 10240(a)
3 and 10241 of the Code:

4 (a) the Chavez Loan in connection with the Cortina
5 Way Property;

6 (b) the Chavez Loan in connection with the real
7 property at 2152 High Street, Oakland, and

8 (c) the Santos Loan in connection with the 42nd
9 Avenue Property,

10 XX

11 PRIOR ADMINISTRATIVE PROCEEDINGS

12 Effective March 27, 2007, in matter H-9765 before the
13 Department, the Real Estate Commissioner denied the application
14 of PACHECO for a real estate license with the right to a
15 restricted real estate license upon certain conditions pursuant
16 to Sections 480(a) and 10177(b) of the Code.

17 XXI

18 The facts alleged above are grounds for the suspension
19 or revocation of the licenses and license rights of Respondents
20 under the following provisions of the Code and/or the
21 Regulations:

22 (a) as to Paragraphs VIII through X and Respondent
23 PACHECO, under Sections 10176(a) and 10177(j) of the Code;

24 (b) as to Paragraph XI and Respondent ALVIDERA, under
25 Sections 10177(h) of the Code;

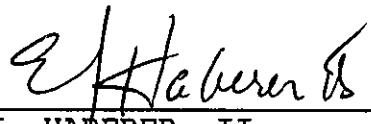
26 (c) as to Paragraphs XII through XV and Respondent
27 ALVIDERA, under Sections 10176(a) and 10177(j) of the Code;

1 (d) as to Paragraphs XVI and XVII and Respondent
2 ALVIDERA, under Section 2831 of the Regulations in conjunction
3 with Sections 10177(d) and 10177(g) of the Code;

4 (e) as to Paragraph VIII and Respondent ALVIDERA,
5 under Section 10176(f) of the Code;

6 (f) as to Paragraph XIX and Respondent ALVIDERA,
7 under Sections 10240(a) and 10241 of the Code in conjunction
8 with Section 10177(d) of the Code..

9 WHEREFORE, Complainant prays that a hearing be
10 conducted on the allegations of this Accusation and that upon
11 proof thereof, a Decision be rendered imposing a disciplinary
12 action against all licenses and license rights of Respondents
13 ALVIDERA and PACHECO under the Real Estate Law (Part 1 of
14 Division 4 of the Business and Professions Code), and for such
15 other and further relief as may be proper under other applicable
16 provisions of law.

17
18 
19 E. J. HABERER, II
Deputy Real Estate Commissioner

20 Dated at Oakland, California
21 this 20th day of June, 2008.
22
23
24
25
26
27