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FILED

JUN - 2 2010

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of )  
 )  
 DEAN CHARLES SOUZA and, )  
 CUAUHTEMOC SANCHEZ )  
 )  
 Respondents. )

NO. H-10634 SF  
OAH NO. N2009070659

DECISION AFTER REJECTION

This matter was heard before Diane Schneider, Administrative Law Judge (ALJ) of the Office of Administrative Hearings, State of California, on December 21 and 22, 2009.

Complainant E. J. Haberer II, in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the Accusation against Respondents DEAN CHARLES SOUZA and CUAUHTEMOC SANCHEZ (Respondent SOUZA, Respondent SANCHEZ, or jointly Respondents). Complainant signed the Accusation on March 30, 2009.

Mary F. Clarke, Counsel, represented the Complainant.

Respondent SOUZA was present and represented by legal counsel, Jeffrey Allen. Respondent SANCHEZ was present and represented by legal counsel, Michael J. Farley.

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

1 On February 22, 2010, I declined to adopt the Proposed Decision and gave notice  
2 of my intention to proceed under Section 11517(c) of the Government Code by deciding the case  
3 on the administrative record and written argument from the parties. Pursuant to Section  
4 11517(c) of the Government Code of the State of California, Respondents were served with  
5 notice of my determination not to adopt the Proposed Decision of the ALJ along with a copy of  
6 said Proposed Decision. Respondents were notified that I would decide the case upon the  
7 record, the transcript of proceedings held on December 21 and 22, 2009, and upon any written  
8 argument offered by Respondents and Complainant. On April 1, 2010, both Respondents  
9 respectively submitted their written arguments.

10 I have given careful consideration to the record in this case including the  
11 transcript of the proceedings of December 21 and 22, 2009.

12 The following shall constitute the Decision of the Real Estate Commissioner  
13 (Commissioner) in this proceeding.

14 FACTUAL FINDINGS

15 1. At the hearing, page 3, line 21 of the Accusation was amended. The  
16 amendment is italicized, as follows: "(b) As to Paragraph 7, under Section 10146 *in*  
17 *conjunction with section 10177, subdivision (d) of the Code.*"

18 2. At all times relevant to this proceeding, Respondent SOUZA was  
19 licensed by the Department of Real Estate (Department) as a real estate broker and worked  
20 as a broker-associate for Propel, Inc., doing business as Re/Max in Motion (Re/Max).  
21 SOUZA's license expired on February 16, 2010.

22 3. At all times relevant to this proceeding, Respondent SANCHEZ was  
23 licensed by the Department as a restricted real estate salesperson and worked for Propel,  
24 Inc., doing business as Re/Max. SANCHEZ' restricted salesperson license was issued on  
25 June 16, 2006, and will expire on August 1, 2010. Pursuant to an Order issued by  
26 Commissioner Jeff Davi on February 28, 2009, SANCHEZ' restricted salesperson license  
27 was suspended, pending final determination of the charges set forth in the Accusation.

1           4. At all times relevant to this proceeding, SOUZA and SANCHEZ were  
2 engaged in the real estate resale brokerage business within the meaning of Business and  
3 Professions Code (Code) section 10131, subdivision (a), wherein, on behalf of others, and  
4 for compensation or in expectation of compensation, Respondents sold and offered to sell,  
5 bought and offered to buy, solicited prospective sellers and purchasers of, solicited and  
6 obtained listings of, and negotiated the purchase and resale of real property.

7           5. Tim Fiebig is the President and Designated Officer-Broker of Propel.  
8 He is SANCHEZ' and SOUZA' employing broker. Fiebig testified at the hearing regarding  
9 the procedures for handling files and depositing funds received from clients of Re/Max. It  
10 is against Re/Max company policy for licensees to receive payments directly from clients.  
11 All checks received from clients are made payable to title companies and not individual  
12 licensees. All funds received are then delivered to title companies. Further, all checks  
13 received from clients must be turned over to Re/Max staff and logged into company  
14 records.

15           6. The evidence established that SOUZA and SANCHEZ collected an  
16 advance fee from Azucena Perez and her husband, Ignacio Contreras. Perez testified at the  
17 hearing regarding the facts and circumstances surrounding the advance fee agreement. In  
18 spring 2008, Perez and Contreras were behind in their house payments and were concerned  
19 that they would lose their home, located at 14945 Saturn Drive, San Leandro. They wanted  
20 advice about placing their home on the market for a short sale and were referred to  
21 SANCHEZ by his relative.

22           7. In March 2008, SANCHEZ met with Perez and Contreras at their home.  
23 SANCHEZ denied, however, that he went to their home to obtain a listing. Instead,  
24 SANCHEZ maintained that he went there as a favor to his relative. At the meeting with  
25 Perez and Contreras, he explained the process of selling their home by way of a short sale,  
26 and he answered their questions. SANCHEZ informed Perez that in order for her to sell  
27 their house by way of a short sale, she would need to deliver paycheck stubs and W-2 forms

1 to his office at Re/Max. After their meeting, SANCHEZ gave Perez and Contreras his  
2 business card with a Re/Max logo. SANCHEZ's name was on the card, above the title  
3 "Sales Associate."

4 8. At Re/Max, SOUZA was leader of a team that included licensed sales  
5 people who were relatively new to the field of real estate. SOUZA advised his team about  
6 real estate transactions and answered their questions. He also helped less experienced  
7 licensees learn how to "prospect mainstream clients." SANCHEZ was part of SOUZA's  
8 team. SOUZA provided SANCHEZ with a packet of short sale documents. SANCHEZ  
9 brought this packet to his next meeting with Perez and Contreras on April 1, 2008.

10 SANCHEZ provided Perez and Contreras with a two-page document entitled "Procedure  
11 for Short Sale Listings/Closings (Procedure for Short Sale)," which states, in pertinent part:

12 *"A non-refundable retainer of \$1,200 will be paid at the time the*  
13 *listing is taken to offset marketing costs and staff time."*

14 SANCHEZ asked Perez and Contreras to sign the Procedure for Short Sale  
15 and to provide him with a \$1,200.00 nonrefundable retainer so "they know they would be in  
16 business together." SANCHEZ denied asking them for a check. Perez and Contreras  
17 signed the Procedure for Short Sale and gave SANCHEZ a check for \$1,200.00, made  
18 payable to "Dean Souza-Remax." Perez "totally trusted" SANCHEZ, so while she did not  
19 read the Procedure for Short Sale in its entirety, she "did not think twice" about giving  
20 SANCHEZ a check for \$1,200.00.

21 9. Perez and Contreras also signed a Residential Listing Agreement and a  
22 Short Sale Listing Addendum. SANCHEZ explained the terms of the listing contract and  
23 helped Perez and Contreras complete it. On the Listing Agreement, SOUZA's signature  
24 appears in the space designated for "Agent." Re/Max appears in the space designated for  
25 "Real Estate Broker (Firm)." SANCHEZ's name is not on either document.

26 10. Shortly after she signed the above-described documents, Perez was told  
27 by someone familiar with real estate laws that SANCHEZ should not have charged an

1 advance fee. Perez contacted SANCHEZ and asked for a refund of the advance fee. He  
2 refused Perez's request, stating that "no one works for free."

3 11. Neither SOUZA nor SANCHEZ submitted the documents used in  
4 connection with obtaining the advance fee from Perez and Contreras to the Department for  
5 its approval prior to use. The Department was not aware that SANCHEZ and SOUZA had  
6 collected an advance fee until Perez filed a complaint with the Department.

7 12. SANCHEZ testified that: he assumed that the forms in the short sale  
8 packet were approved by the Department because SOUZA gave them to him; that he had no  
9 idea that the advance fee he collected from Perez and Contreras was illegal; and, that had he  
10 known this, he would not have collected this fee.

11 13. SANCHEZ testified that: he believed that he was supposed to give  
12 SOUZA the funds he collected from clients; he did not realize that he was under a duty to  
13 turn over such funds to his employing broker, and for this reason SANCHEZ did not deliver  
14 the check for \$1,200.00 to Fiebig, his employing broker, or to Re/Max staff. Instead,  
15 SANCHEZ gave the check to SOUZA.

16 14. The Department issued SANCHEZ a restricted salesperson license in  
17 2006. On July 8, 2006, Respondent SANCHEZ executed a Stipulation and Waiver in which  
18 he admitted to having a 2001 felony conviction in the United States District Court, District  
19 of Arizona, for transportation of marijuana. In the Stipulation and Waiver, he agreed to  
20 submit a statement to the Department wherein his employing broker certifies that the broker  
21 has read the Statement of Issues that is the basis for the issuance of the restricted license,  
22 and that the employing broker will carefully supervise all transaction documents prepared  
23 by the restricted licensee.

24 15. At the hearing, SANCHEZ admitted that he never told Fiebig that his  
25 license was restricted. He added, however, that he gave Fiebig his license, which indicated  
26 that it was restricted. SANCHEZ further testified that he did not understand the contents of  
27 the Stipulation and Waiver. Therefore, he did not realize that he was obligated to inform

1 his employing broker that his license was restricted and to provide him with a copy of the  
2 Statement of Issues.

3 16. SANCHEZ testified that he told SOUZA about his federal felony  
4 conviction for transportation of "something illegal." SOUZA shook his head "no" during  
5 this testimony and subsequently testified that SANCHEZ never told him about his felony  
6 conviction. SANCHEZ's testimony on this point was not credible.

7 17. SOUZA began his career in real estate in 1987, when he received his  
8 real estate salesperson license. This is his first disciplinary matter. He received his broker  
9 license in 1995 and began working as a broker associate for Re/Max in 2001. SOUZA and  
10 Fiebig have associated with each other on a professional and personal basis for 20 years.

11 18. Under the terms of his independent contractor agreement with Re/Max,  
12 SOUZA was under a duty to submit all listings and other service contracts to Re/Max. He  
13 acknowledged; however, that he failed to submit the advance fee agreement, the Residential  
14 Listing Agreement and the Short Sale Listing Addendum to Re/Max. Instead, SOUZA kept  
15 the entire file in his office.

16 19. Fiebig testified that: he was unaware of the Perez and Contreras  
17 transaction until the Department commenced its investigation; that he was unaware that  
18 Perez and Contreras had made payment directly to SOUZA until the Department audited  
19 SOUZA's check register; and that he never would have authorized SOUZA or SANCHEZ to  
20 obtain advance fee payments of any kind unless such payments complied with the  
21 Department's rules and regulations.

22 20. SOUZA stated that he asked for \$1,200.00 in advance fees for short  
23 sales to cover "additional costs inherent in the processing of a short sale transaction." He  
24 testified that he began the practice of collecting advance fees for short sales after hearing  
25 about it from colleagues in Southern California. He testified that he thought that collecting  
26 advance fees was "okay" because it was done by other licensees. He testified that he would  
27 not have engaged in this practice had he known it was illegal.

1           21. SOUZA testified that he considered the advance fee payment as income.  
2 For this reason, he did not think that he was under a duty to deliver the advance fee  
3 payment to Fiebig, or otherwise cause the check to be deposited in a trust account. Instead,  
4 SOUZA deposited the check into his corporate business account bearing the name "Dean  
5 Souza and Associates, Inc." (Dean Souza and Associates, Inc., serves as a repository for  
6 commissions and other funds paid to SOUZA.) These funds were commingled with funds  
7 received by SOUZA for his work as a real estate broker. Perez was not provided with an  
8 accounting regarding the expenditure of her advance fees. SOUZA testified that he now  
9 realizes that he erred when he deposited such checks into his corporate account instead of  
10 turning them over to Re/Max. SOUZA testified that he is embarrassed and remorseful for  
11 his errors, which he views as isolated incidents in his 22-year career in real estate.

12           22. SOUZA collected advance fees from a total of six clients. He testified  
13 that after he learned that his practice of charging advance fees to his short sale clients was  
14 illegal, he stopped this practice. Additionally, he made restitution to the clients who had  
15 paid him advance fees. On October 6, 2008, he sent Perez and Contreras a refund of their  
16 advance fee payment, with a letter apologizing for his error.

17           23. SOUZA currently works as a broker associate at Keller Williams  
18 Realty. At the hearing, four character witnesses (Bill Parker, Kevin Collins, Steve Wilhite  
19 and Robert Steven Pierce) testified on SOUZA's behalf. All witnesses testified that they are  
20 familiar with SOUZA's work as a broker and attested to his honesty and trustworthiness.  
21 The testimony of these witnesses corroborates SOUZA's testimony that his conduct in the  
22 instant matter was an isolated incident. SOUZA testified that he has otherwise followed the  
23 law and has had a productive career in real estate. Robert Steven Pierce, Respondent's  
24 current employing broker, praised Respondent SOUZA's abilities as a real estate broker.  
25 Pierce hopes that SOUZA is allowed to retain his broker license.

26 \\\

27 \\\

1 LEGAL CONCLUSIONS

2 *Respondent SOUZA*

3 1. Pursuant to Code Section 10085 and California Code of Regulations  
4 (Regulations), Title 10, Section 2970, individuals may not collect an advance fee unless he  
5 or she submits materials to be used in soliciting and negotiating such an agreement to the  
6 Commissioner for approval. Such materials must be submitted to the Commissioner 10  
7 days prior to its use. Based on the matters set forth in Factual Finding 11, cause for  
8 discipline against SOUZA exists under Code Section 10085 and Regulations Section 2970,  
9 in conjunction with Code Section 10177, subdivision (d).

10 2. Code Section 10146 provides that advance fees are trust funds and must  
11 be deposited into a trust account. Based upon the matters set forth in Factual Finding 21,  
12 cause for discipline exists against SOUZA under this section; in conjunction with Code  
13 Section 10177, subdivision (d).

14 3. Code Section 10176, subdivision (e) prohibits a licensee from  
15 commingling his own money with money of others which is received and held by him.  
16 Based upon the matters set forth in Factual Finding 21, cause for discipline exists against  
17 SOUZA under this section.

18 4. Where an advance fee is collected and subsequently withdrawn for  
19 the benefit of the broker, Code Section 10146 and Regulations Section 2972, require  
20 that the broker provide an accounting to the person from whom the advance fee was  
21 collected. Based upon the matters set forth in Factual Finding 21, cause for discipline  
22 exists against SOUZA under these sections as they interact with Code Section 10177,  
23 subdivision (d).

24 5. In determining the appropriate discipline, the central question is  
25 whether or not SOUZA is substantially rehabilitated from his misconduct. SOUZA bears  
26 the burden of demonstrating his rehabilitation. The criteria used by the Department in  
27 evaluating a licensee's rehabilitation are set forth in Regulations Section 2911. The



1 paramount concern is whether a licensee is rehabilitated to the extent that he can be trusted  
2 to discharge his duties as a real estate broker in a manner consistent with public safety.

3 Based upon the matters set forth in Factual Findings 21 through 23, it is  
4 determined that SOUZA has established sufficient rehabilitation to allow him to retain a  
5 license on a restricted basis. SOUZA used extremely poor judgment when he embarked  
6 upon the practice of collecting advance fees and commingling them with funds he received  
7 in his business account. One would expect that someone with as much experience as  
8 SOUZA would have known that such practices did not comply with real estate laws and  
9 regulations. Further, it is troubling that SOUZA did not inform his employing broker that  
10 he was engaged in such practices. SOUZA now takes full responsibility for his mistakes.  
11 He testified that he stopped collecting advance fees when he learned that this practice was  
12 illegal, and that he refunded the advance fees he had collected. This is SOUZA's first  
13 disciplinary matter in his 22 years as a licensee. Based upon his testimony and that of  
14 others in the community, it appears that SOUZA's errors were isolated instances.

15 *Respondent Sanchez*

16 6. Pursuant to Code Section 10085 and Regulations Section 2970,  
17 individuals may not collect an advance fee unless he or she submits materials to be used in  
18 soliciting and negotiating such an agreement to the Commissioner for approval. Such  
19 materials must be submitted to the Commissioner 10 days prior to its use. Based on the  
20 matters set forth in Factual Finding 11, cause for discipline exists under Code Section 10085  
21 and Regulations Section 2970, in conjunction with Code Section 10177, subdivision (d).

22 7. Code Section 10146 provides that advance fees are trust funds. Code  
23 Section 10145, subdivision (c), provides that a salesperson who accepts trust funds from  
24 others on behalf of the broker under whom he is licensed shall immediately deliver such  
25 funds to the broker. Based upon the matters set forth in Factual Finding 13, cause for  
26 discipline exists against SANCHEZ under Code Section 10145, subdivision (c), in  
27 conjunction with Code Section 10177, subdivision (d).

1           8.    Where advance fees are collected and subsequently withdrawn for the  
2 benefit of the broker, Code Section 10146 and Regulations Section 2972, require that the  
3 broker provide an accounting to the person from whom the advance fee was collected.

4    Based upon the matters set forth in Factual Finding 3, cause for discipline against  
5 SANCHEZ does not exist under these sections.

6           9.    Based upon the matters set forth in Factual Findings 7, 10, and 14  
7 through 16, it is determined that revocation of SANCHEZ's restricted salesperson license is  
8 the appropriate discipline. SANCHEZ did not fully accept responsibility for his role in  
9 obtaining the advance fees. He was unresponsive to Perez's request for a refund of the  
10 advance fee. While SANCHEZ testified that he did not know that collection of an advance  
11 fee was illegal, and relied on SOUZA's ill-informed advice, SANCHEZ has an independent  
12 duty as a licensee to ensure that his actions comport with the applicable real estate laws and  
13 regulations. In a similar vein, SANCHEZ's failure to understand his obligations under the  
14 Stipulation and Waiver does not abrogate his duty to comply with its terms. SANCHEZ's  
15 testimony that he told SOUZA about his criminal conviction was not credible. Other than  
16 his own testimony, he did not present any evidence regarding his standing in the community  
17 or his rehabilitation from his misconduct.

18           The Legislature seeks to ensure that real estate licensees will, among other  
19 things, be diligent, completely candid and worthy of the fiduciary obligations and  
20 responsibilities they bear by reason of their license. The Department took a chance with  
21 SANCHEZ when it issued him a restricted license in 2006. SANCHEZ's violations of the  
22 Department's rules and regulations and his failure to comply with the terms of his  
23 Stipulation and Waiver in the short time that he held his restricted license raises serious  
24 questions about his fitness to fulfill the responsibilities and duties of a real estate  
25 salesperson. Considering all these matters, it is determined that SANCHEZ has not  
26 demonstrated that he has been rehabilitated to the extent that it would be in the public  
27 interest to permit him to retain his restricted license.

1 *As to Respondents SOUZA and SANCHEZ*

2 10. The factors in mitigation and extenuation and in rehabilitation have been  
3 considered in making the following Order.

4 ORDER

5 I

6 All licenses and licensing rights of Respondent CUAUHTEMOC SANCHEZ are  
7 revoked.

8 II

9 All licenses and licensing rights of Respondent DEAN CHARLES SOUZA  
10 under the Real Estate Law are revoked by reason of Legal Conclusions 1 through 3;  
11 provided, however, a restricted real estate salesperson license shall be issued to Respondent  
12 SOUZA pursuant to Code Section 10156.5 if Respondent SOUZA makes application  
13 therefore and pays to the Department the appropriate fee for the restricted license within  
14 90 days from the effective date of this Decision. The restricted license issued to  
15 Respondent SOUZA shall be subject to all of the provisions of Section 10156.7 of the Code  
16 and to the following limitations, conditions and restrictions imposed under authority of  
17 Section 10156.6 of that Code:

- 18 1. The license shall not confer any property right in the privileges to be  
19 exercised, and the Commissioner may by appropriate order suspend the right  
20 to exercise any privileges granted under this restricted license in the event of:
- 21 (a) The conviction of Respondent SOUZA (including a plea of nolo  
22 contendere) of a crime which is substantially related to Respondent  
23 SOUZA's fitness or capacity as a real estate licensee; or,
- 24 (b) The receipt of evidence that Respondent SOUZA has violated  
25 provisions of the California Real Estate Law, the Subdivided Lands  
26 Law, Regulations of the Real Estate Commissioner, or conditions  
27 attaching to this restricted license.

- 1                   2. Respondent SOUZA shall not be eligible to apply for the issuance of an  
2                   unrestricted real estate license nor the removal of any of the conditions,  
3                   limitations, or restrictions attaching to the restricted license until two (2)  
4                   years have elapsed from the date of issuance of the restricted license to  
5                   Respondent SOUZA.
- 6                   3. With the application for license, or with the application for transfer to a new  
7                   employing broker, Respondent SOUZA shall submit a statement signed by  
8                   the prospective employing real estate broker on a form approved by the  
9                   Department which shall certify as follows:
- 10                  (a) That the employing broker has read the Decision which is the basis for  
11                  the issuance of the restricted license; and,
- 12                  (b) That the employing broker will carefully review all transaction  
13                  documents prepared by the restricted licensee and otherwise exercise  
14                  close supervision over the licensee's performance of acts for which a  
15                  license is required.
- 16                  4. Respondent SOUZA shall, within nine (9) months from the effective date of  
17                  this Order, present evidence satisfactory to the Commissioner that  
18                  Respondent SOUZA has, since the most recent issuance of an original or  
19                  renewal real estate license, taken and successfully completed the continuing  
20                  education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for  
21                  renewal of a real estate license. If Respondent SOUZA fails to satisfy this  
22                  condition, the Commissioner may order the suspension of the restricted  
23                  license until Respondent SOUZA presents such evidence. The  
24                  Commissioner shall afford Respondent SOUZA the opportunity for hearing  
25                  pursuant to the Administrative Procedure Act to present such evidence.
- 26                  5. Respondent SOUZA shall, within six months from the effective date of  
27                  this Order, take and pass the Professional Responsibility Examination

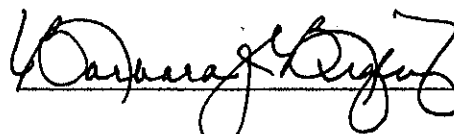
1 administered by the Department including the payment of the appropriate  
2 examination fee. If Respondent SOUZA fails to satisfy this condition, the  
3 Commissioner may order suspension of Respondent SOUZA's license  
4 until Respondent SOUZA passes the examination.

5  
6 This Decision shall become effective at 12 o'clock noon on

7 June 22, 2010.

8 IT IS SO ORDERED 6/1/2010.

9  
10 JEFF DAVI  
Real Estate Commissioner

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14 BY: Barbara J. Bigby  
15 Chief Deputy Commissioner  
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1 MARY F. CLARKE, Counsel (SBN 186744)  
2 Department of Real Estate  
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4 Sacramento, CA 95818-7007

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7

FILED

APR - 3 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 DEAN CHARLES SOUZA, and ) NO. H-10634 SF  
14 CUAUHTEMOC SANCHEZ ) ACCUSATION  
15 Respondents. )  
16 )

17 The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the  
18 State of California, for Accusation against DEAN CHARLES SOUZA (herein "SOUZA"), and  
19 CUAUHTEMOC SANCHEZ (herein "SANCHEZ") (herein collectively "Respondents"), is  
20 informed and alleges as follows:

21 1

22 The Complainant makes this Accusation against Respondents in his official  
23 capacity.

24 2

25 At all times herein mentioned Respondent SOUZA was and now is licensed by  
26 the State of California Department of Real Estate ("Department") as a real estate broker and  
27 worked as a Broker-Associate for Propel, Inc.

1 3

2 At all times herein mentioned, Respondent SANCHEZ was and now is licensed  
3 by the Department as a restricted real estate salesperson in the employ of Propel, Inc.

4 4

5 Respondents engaged in the business of, acted in the capacity of, advertised, or  
6 assumed to act as real estate licensees within the State of California within the meaning of  
7 Section 10131(a) of the California Business and Professions Code (herein "the Code"), for  
8 compensation or in expectation of a compensation, in that Respondents sold or offered to sell,  
9 bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained  
10 listings of, or negotiated the purchase, sale or exchange of real property or a business  
11 opportunity.

12 5

13 On about April 1, 2008, and following, Respondents required Azucena  
14 Esmeralda Perez, (herein "PEREZ") to sign an advance fee agreement entitled "Procedure For  
15 Short Sale Listing/Closures and collected an advanced fee of \$1,200.00.

16 6

17 At all times herein mentioned, Respondents failed to submit to the Department  
18 any or all materials used in advanced fee agreements, including but not limited to the contract  
19 form, any letters or cards used to solicit prospective sellers, and radio and television advertising,  
20 at least 10 calendar days before it was used in obtaining said advance fee agreement, as  
21 described in Paragraph 5, above, in violation of Section of 10085 of the Code and Section 2970  
22 of Title 10, Chapter 6 of the California Code of Regulations (herein "the Regulations").

23 7

24 At all times herein mentioned, Respondents collected an advance fee from  
25 PEREZ, as described in Paragraph 5, above, and failed to deposit such advanced fee, when  
26 collected, into a trust account with a bank or other recognized depository, in violation of Section  
27 10146 of the Code.

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At all times herein mentioned, Respondent SANCHEZ failed to deliver said advanced fee, as described in Paragraphs 5 and 7, above, to his broker, or if so directed by the broker, deliver the funds into the custody of the broker's principal or a neutral escrow depository or deposit the funds into the broker's trust fund account, in violation of Section 10145(c) of the Code.

9

At all times herein mentioned, Respondent SOUZA commingled said trust funds with his own funds, in that he deposited said advanced fee, as described in Paragraphs 5 and 7, above, into his own corporate account, in violation of Section 10176(e) of the Code.

10

At all times herein mentioned, Respondents failed to provide PEREZ an accounting of said advance fee, in violation of Section 10146 of the Code and Section 2972 of the Regulations.

11

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

- (a) As to Paragraph 6, under Section 10085 of the Code, and Section 2970 of Regulations in conjunction with Section 10177(d) of the Code;
- (b) As to Paragraph 7, under Section 10146 of the Code;
- (c) As to Paragraph 8, and Respondent SANCHEZ, under Section 10145(c) of the Code in conjunction with Section 10177(d) of the Code;
- (d) As to Paragraph 9, and Respondent SOUZA, under Section 10176(e) of the Code; and,
- (e) As to Paragraph 10, under Section 10146 of the Code, and Section 2972 of the Regulations in conjunction with Section 10177(d) of the Code.



1                   WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
2 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary  
3 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of  
4 Division 4 of the Business and Professions Code) and for such other and further relief as may be  
5 proper under other applicable provisions of law.

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11                  E. J. HABERER II  
12                  Deputy Real Estate Commissioner

13                  Dated at Oakland, California,  
14                  this 30<sup>th</sup> day of March, 2009.