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**FILED**

FEB 19 2016

BUREAU OF REAL ESTATE

By S. Black

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

MIGUEL ANGEL ROCHA,

Respondent.

No. H-11845 SF

ORDER NUNC PRO TUNC  
CORRECTING CLERICAL ERROR

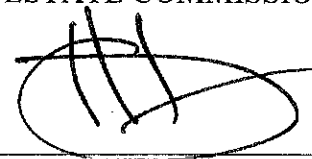
It having been called to the attention of the Real Estate Commissioner that there was a clerical error in the Decision dated February 12, 2016, and good cause appearing therefor, the Decision is:

Amended to show that the effective date is March 4, 2016.

This Decision shall become effective effectively immediately.

IT IS SO ORDERED February 19, 2016.

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



By: JEFFREY MASON  
Chief Deputy Commissioner

**FILED**

FEB 16 2016

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA  
BUREAU OF REAL ESTATE  
By B. Nicholas

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In the Matter of the Accusation of )  
MIGUEL ANGEL ROCHA, ) CalBRE No. 11845 SF  
Respondent. ) OAH No. 2015061045

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DECISION

The Proposed Decision dated August 20, 2015, 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.

This Decision shall become effective immediately.

IT IS SO ORDERED FEB 12 2016

REAL ESTATE COMMISSIONER



By: **JEFFREY MASON**  
Chief Deputy Commissioner

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MIGUEL ANGEL ROCHA,

Respondent.

No. H-11845 SF

OAH No. 2015061045

**PROPOSED DECISION**

Administrative Law Judge Nancy L. Rasmussen, State of California, Office of Administrative Hearings, heard this matter on August 20, 2015, in Oakland, California.

Bureau of Real Estate Counsel III Richard K. Uno represented complainant Robin S. Tanner, Deputy Real Estate Commissioner, State of California.

Daniel W. Ballesteros, Attorney at Law, Hoge, Fenton, Jones & Appel, Inc., represented respondent Miguel Angel Rocha, who was present.

The record was held open for respondent to submit an additional court document. On August 24, 2015, respondent filed electronically Respondent's Additional Evidence and an attached court order under Penal Code section 1203.4. On August 26, 2015, the original of this document was received, marked as Exhibit K and admitted in evidence.

The matter was deemed submitted on August 24, 2015.

**FACTUAL FINDINGS**

1. Respondent Miguel Angel Rocha is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate broker.

2. On November 26, 2013, in Santa Clara County, respondent was convicted on a plea of nolo contendere of violating Civil Code section 2945.4, subdivision (g)/2954.7 (inducing or attempting to induce owner to enter into noncompliant foreclosure consultant contract), a misdemeanor. Imposition of sentence was suspended, and respondent was

placed on court probation for one year. Conditions of probation included serving one day in jail, with credit for time served of one day.

On January 19, 2015, the court granted respondent's petition for expungement of the conviction under Penal Code section 1203.4.

3. The transaction that led to this conviction occurred when respondent was doing business as the Regional Loan Modification Center. On February 7, 2011, homeowner Maria Rios came to respondent because she was delinquent in her mortgage payments and a trustee sale had been set for February 17, 2011. Respondent and Rios entered into a written Foreclosure Assistance Contract, providing that respondent would "assist in obtaining a postponement of the scheduled trustee sale date." The contract stated:

A fee of \$6,500.00 is due upon completion of services rendered. Services will be considered rendered by both parties upon obtaining a written or verbal agreement to postpone the trustee sale . . . .

[¶] . . . [¶]

This is NOT a loan modification contract. The \$6,500 fee does not include services for submitting a loan modification. The client may proceed with all options available from the bank upon obtaining a sale date postponement.

Rios's primary language is Spanish, and she spoke only a little English. According to respondent, Rios was accompanied by her boyfriend, Ponciano Martinez, who spoke Spanish and English. Respondent's discussions with Rios and Martinez were conducted primarily in Spanish, although respondent maintains it is his practice to convey information to clients in English first and to repeat the information in Spanish to Spanish-speaking clients. He read the contract to Rios in English prior to her signing it, but he did not provide her a copy of the contract in Spanish.

On February 10, 2011, respondent called a representative of the lender and negotiated a postponement of the trustee sale. He also negotiated a forbearance agreement requiring Rios to pay \$2,000 initially and to make monthly payments of \$2,435 for five months. The following day Rios came to respondent's office and signed the forbearance agreement. She apparently gave him a check for \$6,500, but respondent asked her to pay \$2,000 to the lender and give him \$4,500. Rios wired the payment to the lender to secure the forbearance agreement, and she paid respondent \$4,500.

Respondent's notes reflect that he made several calls to make sure the trustee sale was postponed and continued to be postponed. In July 2011, the lender informed respondent that there were discrepancies with the social security number Rios used to obtain the loan and this could interfere with an application for loan modification. After meeting with Rios and

Martinez about this, respondent called the lender and was advised that the trustee sale would be put on hold. Respondent last talked to Rios in September 2011, when she told him she was considering selling the property. Respondent answered her questions about the short sale process. By October 2011, she was not returning his calls. In November 2011, respondent learned from the lender that Rios was pursuing a short sale with another real estate agent. The property was ultimately sold in a short sale in March 2013.

4. In June 2013, Rios filed a small claims court action against respondent seeking a refund of the \$4,500 she paid to respondent plus interest. She asserted that respondent had promised to obtain a loan modification for her but failed to do so. Although he disputed her claim, respondent volunteered to refund the money Rios had paid him. On July 17, 2013, respondent paid Rios \$4,950 in return for her dismissing the action.

5. On July 11, 2013, a felony complaint against respondent was filed. There were two felony charges pertaining to Rios – grand theft and unlawful collection of fee by foreclosure consultant. Respondent was unaware of these criminal charges until August 1, 2013, when law enforcement officers came to his home and arrested him. When respondent agreed to plead nolo contendere to a misdemeanor violation of Civil Code section 2945.4, subdivision (g)/2954.7 (inducing or attempting to induce owner to enter into noncompliant foreclosure consultant contract), he understood that his violation was failing to give Rios a Spanish language copy of her Foreclosure Assistance Contract.<sup>1</sup>

6. Respondent denies that he ever promised or led Rios to believe that he would obtain a loan modification for her.<sup>2</sup> He points out that she never requested an explanation of the contract in Spanish, and the first time she complained about not understanding the contract was in her small claims court action. Under the terms of the contract respondent earned his fee when he obtained a postponement of the trustee sale.

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<sup>1</sup> Under Civil Code section 2945.4, subdivision (g), it is a violation for a foreclosure consultant to “[i]nduce or attempt to induce any owner to enter into a contract which does not comply in all respects with Section 2945.2 and 2945.3.” Civil Code section 2945.3, subdivision (c), provides:

The contract shall be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract. In addition, the foreclosure consultant shall provide the owner, before the owner signs the contract, with a copy of a completed contract written in any other language used in any communication between the foreclosure consultant and the owner . . . .

<sup>2</sup> Rios’s claims to the contrary, contained in the incident report of the district attorney’s investigator, are hearsay and insufficient to support any factual findings.

7. Respondent has been a licensed real estate broker since 1997. For many years he engaged in mortgage loan brokerage, but he discontinued this business when NMLS registration was required. He has not obtained NMLS registration. Respondent no longer acts as a foreclosure consultant or obtains loan modifications for clients. His sole real estate business is buying and selling residential property, and all his clients come from referrals. Respondent is a native Spanish speaker, and he prides himself on being able to serve his many Spanish-speaking clients. His arrest and conviction have made respondent particularly vigilant to make sure there are no misunderstandings with such clients and to make sure he is in compliance with all legal requirements. He has used the California Association of Realtors Legal Hotline and consulted with his own attorney.

8. Three of respondent's past clients, one of whom is his sister-in-law, came to the hearing to testify on his behalf. They praised respondent for his honesty and trustworthiness in their dealings with him. These sentiments are echoed in numerous letters from other past clients who utilized respondent's services to obtain loan modifications.

9. Respondent's parents were farm laborers, and he was the first person in his family to attend college. After receiving a bachelor's degree from San Jose State University in 1992, he began his career in the mortgage and real estate industry. In 1995 respondent obtained his license as a real estate salesperson. He and his wife have been married for 19 years and have three children – two sons, ages 16 and 9, and a daughter, age 13.

10. Respondent has always been involved in his community, but since his conviction he has become more active in his involvement. He is a valued parent-volunteer at the Adelante Dual Language Academy, a Spanish immersion elementary school in San Jose where his children have gone for elementary school. He has coached students in the MESA (Mathematics, Engineering and Science Achievement) program and helped at school events and fundraisers. Respondent has coached Little League baseball since his older son was five years old. In his letter of support, Evergreen Little League president Toby Strite praised respondent for his excellent character and the positive life lessons he passes along to the children.

11. Respondent is involved in the Latino Leadership Alliance, a nonprofit organization in San Jose promoting community-building and leadership development in the Latino community. Eddie Garcia, co-founder and president of the organization, wrote a letter of support in which he stated that respondent is a role model for Latinos in business. This year respondent took on a high school student as a summer intern in his real estate office.

12. Business and Professions Code section 10186.2, subdivision (a), requires a real estate licensee to report to the Bureau of Real Estate, in writing, any criminal conviction within 30 days of the conviction. Respondent was unaware of this requirement and failed to report his conviction to the bureau. He asserts that his attorney told him the district attorney would notify all appropriate agencies and respondent did not need to do anything.

13. The bureau has incurred the following reasonable costs for the investigation and enforcement of this case:

Investigative Services

Supervising Special Investigator:

0.50 hours @ \$80/hour - \$40

Special Investigator:

10.75 hours @ \$62/hour - \$666.50  
\$706.50

Legal Services

Real Estate Counsel:

10.30 hours @ \$89/hour - \$916.70  
Total \$1,623.20

### LEGAL CONCLUSIONS

1. Under Business and Professions Code section 490 and section 10177, subdivision (b), a real estate license may be suspended or revoked if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's violation of Civil Code section 2945.4, subdivision (g)/2954.7 (inducing or attempting to induce owner to enter into noncompliant foreclosure consultant contract), occurred in the course of his real estate business and is substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's conviction therefore constitutes cause to suspend or revoke his real estate license under Business and Professions Code section 490 and section 10177, subdivision (b).

2. Respondent's failure to report his conviction to the bureau violated Business and Professions Code section 10186.2, subdivision (a). This violation constitutes cause to suspend or revoke his real estate license under Business and Professions Code section 10186.2, subdivision (b), and section 10177, subdivision (d).

3. Complainant has requested that respondent be ordered to pay the Real Estate Commissioner the costs of investigation and enforcement of the case. Under Business and Professions Code section 10106, respondent may be ordered to pay the commissioner "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual and reasonable costs of investigation and enforcement are \$1,623.20 (Finding 13). The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the amount of any cost recovery award. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. In respondent's case, the evidence does not support a

reduction of the amount of cost recovery under the *Zuckerman* factors. Accordingly, respondent shall be ordered to pay the full costs of \$1,623.20.

4. There is no evidence that respondent's failure to provide Maria Rios with a copy of her contract in Spanish was part of a pattern of illegal or unscrupulous conduct in his real estate business. Respondent takes seriously his professional and ethical obligations, and numerous past clients attest to his honesty and trustworthiness. Compared with standard real estate sales, working as a foreclosure consultant may have more ethical pitfalls or potential for client misunderstanding, but respondent no longer does such work. He is actively involved in his community, where he is held in high regard. It would not be contrary to the public interest to allow respondent to retain his real estate broker license on a restricted basis.

### ORDER

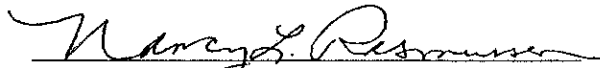
All licenses and licensing rights of respondent Miguel Angel Rocha under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if he makes application therefor and pays to the Bureau 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:

1. The restricted license 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 his fitness or capacity as a real estate licensee.
2. The restricted license 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 nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this decision.
4. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate

license. If respondent fails to satisfy this condition, the commissioner may order the suspension of the restricted license until respondent presents such evidence. The commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall pay to the Real Estate Commissioner costs associated with the investigation and enforcement of this case pursuant to Business and Professions Code section 10106 in the amount of \$1,623.20. Payment shall be made within 60 days of the effective date of this decision, unless the commissioner, upon a request from respondent, allows payment to be made in installments. If the commissioner allows payment to be made in installments, respondent shall pay each installment on or before the due date set forth in the installment payment schedule.

DATED: September 22, 2015

  
NANCY L. RASMUSSEN  
Administrative Law Judge  
Office of Administrative Hearings

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OCT 30 2015

BUREAU OF REAL ESTATE

By S. Black

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-11845 SF
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MIGUEL ANGEL ROCHA,	)	OAH No. 2015061045
	)	
Respondent.	)	

NOTICE

TO: MIGUEL ANGEL ROCHA, Respondent and DANIEL W. BALLESTEROS, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 22, 2015, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 22, 2015, 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 August 20, 2015, 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 August 20, 2015, at the Sacramento


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

6 DATED: 10/25/2015

7 REAL ESTATE COMMISSIONER

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10 WAYNE S. BELL

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BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MIGUEL ANGEL ROCHA,

Respondent.

No. H-11845 SF

OAH No. 2015061045

**PROPOSED DECISION**

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<sup>1</sup> Under Civil Code section 2945.4, subdivision (g), it is a violation for a foreclosure consultant to “[i]nduce or attempt to induce any owner to enter into a contract which does not comply in all respects with Section 2945.2 and 2945.3.” Civil Code section 2945.3, subdivision (c), provides:

The contract shall be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract. In addition, the foreclosure consultant shall provide the owner, before the owner signs the contract, with a copy of a completed contract written in any other language used in any communication between the foreclosure consultant and the owner . . . .

<sup>2</sup> Rios’s claims to the contrary, contained in the incident report of the district attorney’s investigator, are hearsay and insufficient to support any factual findings.

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10. Respondent has always been involved in his community, but since his conviction he has become more active in his involvement. He is a valued parent-volunteer at the Adelante Dual Language Academy, a Spanish immersion elementary school in San Jose where his children have gone for elementary school. He has coached students in the MESA (Mathematics, Engineering and Science Achievement) program and helped at school events and fundraisers. Respondent has coached Little League baseball since his older son was five years old. In his letter of support, Evergreen Little League president Toby Strite praised respondent for his excellent character and the positive life lessons he passes along to the children.

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13. The bureau has incurred the following reasonable costs for the investigation and enforcement of this case:

Investigative Services

Supervising Special Investigator:

0.50 hours @ \$80/hour      -      \$40

Special Investigator:

10.75 hours @ \$62/hour      -      \$666.50  
\$706.50

Legal Services

Real Estate Counsel:

10.30 hours @ \$89/hour      -      \$916.70

Total      \$1,623.20

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 490 and section 10177, subdivision (b), a real estate license may be suspended or revoked if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's violation of Civil Code section 2945.4, subdivision (g)/2954.7 (inducing or attempting to induce owner to enter into noncompliant foreclosure consultant contract), occurred in the course of his real estate business and is substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's conviction therefore constitutes cause to suspend or revoke his real estate license under Business and Professions Code section 490 and section 10177, subdivision (b).

2. Respondent's failure to report his conviction to the bureau violated Business and Professions Code section 10186.2, subdivision (a). This violation constitutes cause to suspend or revoke his real estate license under Business and Professions Code section 10186.2, subdivision (b), and section 10177, subdivision (d).

3. Complainant has requested that respondent be ordered to pay the Real Estate Commissioner the costs of investigation and enforcement of the case. Under Business and Professions Code section 10106, respondent may be ordered to pay the commissioner "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual and reasonable costs of investigation and enforcement are \$1,623.20 (Finding 13). The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the amount of any cost recovery award. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. In respondent's case, the evidence does not support a

reduction of the amount of cost recovery under the *Zuckerman* factors. Accordingly, respondent shall be ordered to pay the full costs of \$1,623.20.

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#### ORDER

All licenses and licensing rights of respondent Miguel Angel Rocha under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if he makes application therefor and pays to the Bureau 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:

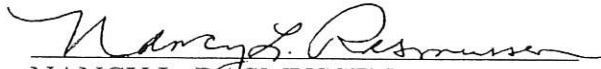
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2. The restricted license may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, regulations 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 nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this decision.
4. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate

Not Adopted

license. If respondent fails to satisfy this condition, the commissioner may order the suspension of the restricted license until respondent presents such evidence. The commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall pay to the Real Estate Commissioner costs associated with the investigation and enforcement of this case pursuant to Business and Professions Code section 10106 in the amount of \$1,623.20. Payment shall be made within 60 days of the effective date of this decision, unless the commissioner, upon a request from respondent, allows payment to be made in installments. If the commissioner allows payment to be made in installments, respondent shall pay each installment on or before the due date set forth in the installment payment schedule.

DATED: September 22, 2015

  
NANCY L. RASMUSSEN  
Administrative Law Judge  
Office of Administrative Hearings