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FILED
OCT 28 2010
DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
MARIBEL DUENAS,
Respondent.

No. H-28762 LA

ORDER DENYING REINSTATEMENT OF LICENSE

Effective August 20, 2001, a Decision was rendered revoking the real estate salesperson license of Respondent, but granting Respondent the right to apply for a restricted real estate salesperson license. In the Decision, it was determined that Respondent knowingly filed false documents with a financial institution.

A restricted real estate salesperson license was issued to Respondent on August 20, 2001 and will expire on August 18, 2011.

On April 10, 2009, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence submitted in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has

///

1 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate
2 salesperson license at this time.

3 The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*
4 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and
5 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
6 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

7 The Department has developed criteria in Section 2911 of Title 10, California
8 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
9 reinstatement of a license. Among the criteria relevant in this proceeding are:

10 Regulation 2911(k) Correction of business practices .

11 Respondent has not provided proof that Respondent has corrected business
12 practices.

13 Regulation 2911(l) Significant or conscientious involvement in community,
14 church or privately-sponsored programs designed to provide social benefits or to ameliorate
15 social problems.

16 Respondent has not provided evidence of qualifying community service activities.

17 Regulation 2911(n) Change in attitude from that which existed at the time of the
18 conduct in question as evidenced by any or all of the following:

19 (1) Testimony of applicant.

20 Respondent has not provided proof of a change in attitude.

21 Given the violations found and the fact that Respondent has not established that
22 Respondent has complied with Regulations 2911 (k), (l) and (n)(1), I am not satisfied that
23 Respondent is sufficiently rehabilitated to receive a real estate salesperson license.

24 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
25 reinstatement of Respondent's real estate salesperson license is denied.

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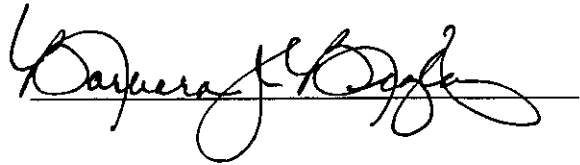
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This Order shall become effective at 12 o'clock noon on NOV 17 2010

IT IS SO ORDERED 10/20/2010


JEFF DAVI
Real Estate Commissioner



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FILED
JAN 10 2006
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-28762 LA
))
 MARIO CESAR ESPINOZA,))
))
 Respondent.))

ORDER GRANTING REINSTATEMENT OF LICENSE

On July 24, 2001, a Decision was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on August 20, 2001.

On October 20, 2003, Respondent petitioned for reinstatement of said real estate salesperson license and the Attorney General of the State of California has been given notice of the filing of said petition.

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1 I have considered the petition of Respondent and
2 the evidence and arguments in support thereof including
3 Respondent's record as a restricted licensee. Respondent
4 has demonstrated to my satisfaction that Respondent meets
5 the requirements of law for the issuance to Respondent of
6 an unrestricted real estate salesperson license and that
7 it would not be against the public interest to issue said
8 license to Respondent.
9

10 NOW, THEREFORE, IT IS ORDERED that Respondent's
11 petition for reinstatement is granted and that a real estate
12 salesperson license be issued to Respondent, if Respondent
13 satisfies the following conditions within nine (9) months from
14 the date of this Order:

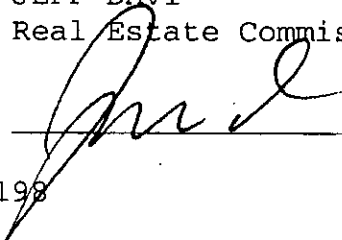
15 1. Submittal of a completed application and payment
16 of the fee for a real estate salesperson license.

17 2. Submittal of evidence of having, since the most
18 recent issuance of an original or renewal real estate license,
19 taken and successfully completed the continuing education
20 requirements of Article 2.5 of Chapter 3 of the Real Estate
21 Law for renewal of a real estate license.

22 This Order shall be effective immediately.

23 Dated: 1-4-06

24 JEFF DAVI
25 Real Estate Commissioner

26 
27

cc: Mario C. Espinoza
6245 S. Atlantic Ave., #198
Bell, CA 90201

1
2 On October 9, 2003, Respondent petitioned for
3 reinstatement of said real estate salesperson license and
4 the Attorney General of the State of California has been
5 given notice of the filing of said petition.

6 I have considered the petition of Respondent and
7 the evidence and arguments in support thereof including
8 Respondent's record as a restricted licensee. Respondent
9 has demonstrated to my satisfaction that Respondent meets
10 the requirements of law for the issuance to Respondent of
11 an unrestricted real estate salesperson license and that
12 it would not be against the public interest to issue said
13 license to Respondent.

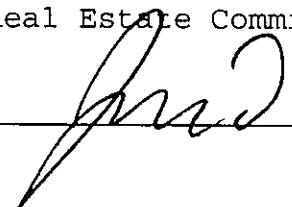
14 NOW, THEREFORE, IT IS ORDERED that Respondent's
15 petition for reinstatement is granted and that a real estate
16 salesperson license be issued to Respondent, if Respondent
17 satisfies the following condition within nine (9) months from
18 the date of this Order:

19 Submittal of a completed application and payment of
20 the fee for a real estate salesperson license.

21 This Order shall be effective immediately.

22 Dated: 1-4-06

23 JEFF DAVI
24 Real Estate Commissioner

25 

26 cc: Jesus Diaz
27 18220 La Cortita Street
Rowland Heights, CA 91748

Jesus Diaz

FILED
APR 25 2002
DEPARTMENT OF REAL ESTATE

Laura B. [Signature]

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-28762 LA
JESUS DIAZ,)
)
Respondent.)

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: JESUS DIAZ
11711 Whittier Blvd.
Whittier, CA 90601

On August 20, 2001, 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 Order of July 24, 2001, in case No. H-28762 LA, effective August 20, 2001. The Order granted respondent 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 and to enumerated additional terms, conditions and restrictions imposed under authority of

1 Section 10156.6 of said Code. Among those terms, conditions and
2 restrictions, respondent was required to successfully complete
3 the Professional Responsibility Examination within 6 months from
4 August 20, 2001. The Commissioner has determined that as of
5 March 20, 2002, respondent has failed to satisfy this condition,
6 and as such, is in violation of Section 10177(k) of the Business
7 and Professions Code. Respondent has no right to renew the
8 restricted license if this condition isn't satisfied by the date
9 of its expiration. (Section 10156.7 of the Business and
10 Professions Code.)

11 NOW, THEREFORE, IT IS ORDERED under authority of
12 Section 10156.7 of the Business and Professions Code of the State
13 of California that the restricted real estate salesperson license
14 heretofore issued to respondent and the exercise of any
15 privileges thereunder is hereby suspended until such time as you
16 provide proof satisfactory to the Department of compliance with
17 the "condition(s)" referred to above, or pending final
18 determination made after hearing (see "Hearing Rights" set forth
19 below)."

20 IT IS FURTHER ORDERED that all license certificates and
21 identification cards issued by Department which are in the
22 possession of respondent be immediately surrendered by personal
23 delivery or by mailing in the enclosed, self-addressed envelope
24 to:

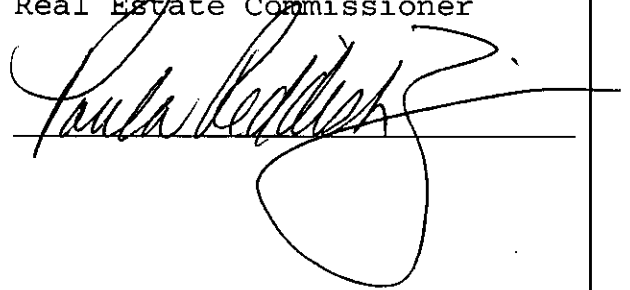
25 Department of Real Estate
26 Attn: Flag Section
27 P. O. Box 187000
Sacramento, CA 95818-7000

1 HEARING RIGHTS: Pursuant to the provisions of Section
2 10156.7 of the Business and Professions Code, you have the right
3 to a hearing to contest the Commissioner's determination that you
4 are in violation of Section 10177(k). If you desire a hearing,
5 you must submit a written request. The request may be in any
6 form, as long as it is in writing and indicates that you want a
7 hearing. Unless a written request for a hearing, signed by or on
8 behalf of you, is delivered or mailed to the Department at 320
9 West Fourth Street, Suite 350, Los Angeles, California 90013,
10 within 20 days after the date that this Order was mailed to or
11 served on you, the Department will not be obligated or required
12 to provide you with a hearing.

13 This Order shall be effective immediately.

14 DATED: April 17, 2002

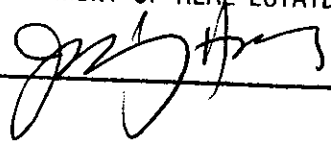
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16 PAULA REDDISH ZINNE MANN
17 Real Estate Commissioner

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FILED
APR 12 2002
DEPARTMENT OF REAL ESTATE
By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
MARIO CESAR ESPINOZA,)	No. H-28762 LA
Respondent.)	L-2000110296

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: MARIO CESAR ESPINOZA:

On or about August 20, 2001, 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 Order and Decision of July 24, 2001, in Case No. H-28762 LA. This Order which effective August 20, 2001, granted Respondent 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 and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of said Code.

1 Among those terms, conditions and restrictions, Respondent
2 was required, within six months from the effective date of
3 the restricted license, to take and pass the Professional
4 Responsibility Examination administered by the Department.
5 The Commissioner has determined that as of March 20, 2002,
6 Respondent has failed to satisfy this condition, and as
7 such, is in violation of Section 10177(k) of the Business
8 and Professions Code. Respondent has no right to renew the
9 restricted license if this condition isn't satisfied by the
10 date of its expiration. (Section 10156.7 of the Business
11 and Professions Code.)

12 NOW, THEREFORE, IT IS ORDERED under authority of
13 Section 10156.7 of the Business and Professions Code of the
14 State of California that the restricted real estate
15 salesperson license heretofore issued to Respondent and the
16 exercise of any privileges thereunder is hereby suspended
17 until such time as you provide proof satisfactory to the
18 Department of compliance with the "condition" referred to
19 above, or pending final determination made after hearing
20 (see "Hearing Rights" set forth below)."

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

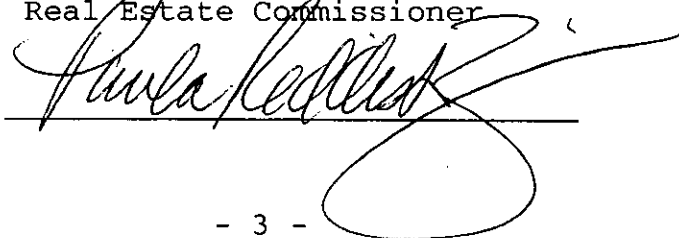
Department of Real Estate
Attn: Flag Section
P. O. Box 187000
Sacramento, CA 95818-7000

HEARING RIGHTS: Pursuant to the provisions of Section 10156.7 of the Business and Professions Code, you have the right to a hearing to contest the Commissioner's determination that you are in violation of Section 10177(k). If you desire a hearing, you must submit a written request. The request may be in any form, as long as it is in writing and indicates that you want a hearing. Unless a written request for a hearing, signed by or on behalf of you, is delivered or mailed to the Department at 320 W. 4th Street, Suite 350, Los Angeles, California, within 20 days after the date that this Order was mailed to or served on you, the Department will not be obligated or required to provide you with a hearing.

This Order shall be effective immediately.

DATED: April 9, 2002

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



By Laura B. Iron

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-28762 LA
MARIO CESAR ESPINOZA,)	L-2000 110 296
MARIBEL DUENAS, and)	
JESUS DIAZ,)	
Respondents.)	

DECISION AFTER REJECTION

The above-entitled matter came on for hearing before Paul M. Hogan, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California, on February 8, 2001.

Complainant was represented by James R. Peel, Counsel. Respondent MARIO CESAR ESPINOZA was present at the hearing and represented by Charles E. Masburn, Esq., and Respondents MARIBEL DUENAS and JESUS DIAZ were present at the hearing and represented by Michael A. Lamphere, Esq. Evidence was received and the matter submitted on this date.

1 On March 2, 2001, the Administrative Law Judge
2 submitted a Proposed Decision which I declined to adopt as the
3 Decision of the Real Estate Commissioner. Pursuant to Section
4 11517(c) of the Government Code of the State of California,
5 Respondents were served with a copy of the Proposed Decision
6 dated March 2, 2001, and with Notice that the case would be
7 decided by me upon the record including the transcript of
8 proceedings held on February 8, 2001 and upon any written
9 argument offered by the parties.

10 Argument has been submitted on behalf of the
11 respondents MARIBEL DUENAS and JESUS DIAZ. I have given careful
12 consideration to the record in this case including the transcript
13 of proceedings of February 8, 2001.

14 The Decision in this matter is set forth below.

15 The Findings of Facts set forth in the Proposed
16 Decision are adopted as the Findings of Facts in this Decision in
17 their entirety.

18 The Legal Conclusions of the Proposed Decision is
19 adopted as the Determination of Issues in this matter except the
20 last sentence of the Legal Conclusions on page three of the
21 Proposed Decision.

22 Additional Determination of Issues are added as
23 follows:

24 The public interest will be adequately protected by
25 issuing respondents a restricted license. The recommendation of
26 the Administrative Law Judge of a lighter penalty is considered
27

1 to be inappropriate considering the activities engaged in by
2 Respondents. The facts show that Respondents knowingly filed
3 false documents with a financial institution. Such activities
4 require greater protection of the public interest than that
5 proposed by the Administrative Law Judge.

6 ORDER

7 All licenses and licensing rights of Respondents MARIO
8 CESAR ESPINOZA, MARIBEL DUENAS, and JESUS DIAZ under the Real
9 Estate Law are revoked; provided, however, a restricted real
10 estate salesperson license shall be issued to each Respondent
11 pursuant to Section 10156.5 of the Business and Professions Code
12 if Respondent makes application therefor and pays to the
13 Department of Real Estate the appropriate fee for the restricted
14 license within 90 days from the effective date of this Decision.
15 The restricted license issued to Respondent shall be subject to
16 all of the provisions of Section 10156.7 of the Business and
17 Professions Code and to the following limitations, conditions and
18 restrictions imposed under authority of Section 10156.6 of that
19 Code:

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

25 2. The restricted license issued to Respondent may be
26 suspended prior to hearing by Order of the Real Estate
27

1 Commissioner on evidence satisfactory to the Commissioner that
2 Respondent has violated provisions of the California Real Estate
3 Law, the Subdivided Lands Law, Regulations of the Real Estate
4 Commissioner or conditions attaching to the restricted license.

5 3. Respondent shall not be eligible to apply for the
6 issuance of an unrestricted real estate license nor for the
7 removal of any of the conditions, limitations or restrictions of
8 a restricted license until two years have elapsed from the
9 effective date of this Decision.

10 4. Respondent shall, within 9 months from the effective
11 date of this Decision, present evidence satisfactory to the Real
12 Estate Commissioner that Respondent has, since the most recent
13 issuance of an original or renewal real estate license, taken and
14 successfully completed the continuing education requirements of
15 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
16 real estate license. If Respondent fails to satisfy this
17 condition, the Commissioner may order the suspension of the
18 restricted license until the Respondent presents such evidence.
19 The Commissioner shall afford Respondent the opportunity for a
20 hearing pursuant to the Administrative Procedure Act to present
21 such evidence.

22 5. Respondent shall submit with any application for
23 license under an employing broker, or any application for
24 transfer to a new employing broker, a statement signed by the
25 prospective employing real estate broker on a form approved by
26 the Department of Real Estate which shall certify:

27

1 (a) That the employing broker has read the Proposed
2 Decision and the Decision After Rejection of the Commissioner
3 which granted the right to a restricted license; and

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

8 6. Respondent shall, within six months from the
9 effective date of the restricted license, take and pass the
10 Professional Responsibility Examination administered by the
11 Department including the payment of the appropriate examination
12 fee. If respondent fails to satisfy this condition, the
13 Commissioner may order suspension of the restricted license until
14 respondent passes the examination.

15 Petition for reinstatement of a revoked real estate
16 license is controlled by Section 11522 of the Government Code.

17 A copy of Section 11522 is attached hereto for the information
18 of respondent.

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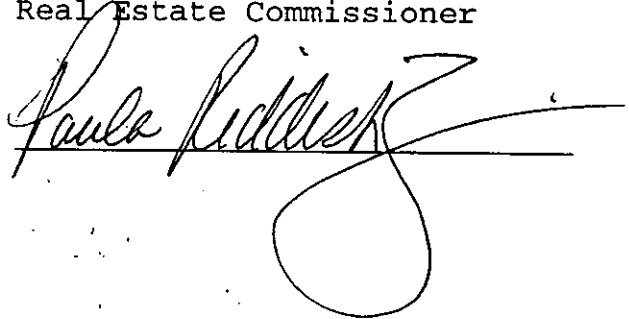
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1 If and when application is made for a real estate
2 license through a petition for reinstatement, all competent
3 evidence of rehabilitation presented by the respondent will be
4 considered by the Real Estate Commissioner. A copy of the
5 Commissioner's Criteria of Rehabilitation is attached hereto.

6 This Decision shall become effective at 12 o'clock noon
7 on August 20, 2001.

8 IT IS SO ORDERED

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10 PAULA REDDISH ZINNEMANN
11 Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation Against:)	No. H-28762 LA
)	
MARIO CESAR ESPINOZA,)	OAH No. L-2000110296
MARIBEL DUENAS, and)	
JESUS DIAZ,)	
)	
Respondents.)	
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PROPOSED DECISION

This case was tried before Paul M. Hogan, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on February 8, 2001.

James R. Peel, counsel, represented complainant. Charles E. Mashburn, attorney at law, represented respondent Mario Cesar Espinoza, who appeared personally. Michael A. Lamphere, attorney at law, represented Jesus Diaz and Maribel Duenas, respondents, who appeared personally.

The parties presented oral and documentary evidence and submitted the matter for decision. The Administrative Law Judge proposes:

Factual Findings

1. Complainant, Thomas McCrady, is a Deputy Real Estate Commissioner of the State of California and filed the accusatory pleadings in this matter while acting solely in his official capacity.

2. At all times herein mentioned, respondents above-named were, each and all, licensed by the Department to act as real estate sales persons in the State of California, and were so acting for, and in expectation of, compensation. The licenses are in full force and effect and each respondent has licensing rights incidental thereto.

3. On or about October 20, 1997, respondent Espinoza, acting as a dual agent for seller Mattoy and buyer Gomez, negotiated a sale of residential real estate located at 4058 E. 52d Street, Maywood, California.

4. The terms of the sale required that Mr. Gomez obtain a new first trust deed loan. He did so through Amerimort Financial dba Citimortgage Bancorp, assisted by the lender's agents, respondents Duenas and Diaz.

5. Respondent Diaz assisted Mr. Gomez in preparing his application for a secured real estate loan from the lender. The written loan application was prepared by Diaz, and typed by respondent Duenas. The application stated Mr. Gomez to have "cash saved at home in the sum of \$8,800." (Exhibit 8) The application also stated that Mr. Gomez would be required to pay \$6,623.63 to cover the total costs of the sale of \$143,154.80.

6. Mr. Gomez did not have these monies, and Duenas and Diaz knew this to be so before the escrow closed on December 24, 1997. Duenas put \$7,000.00 of her personal funds in the Gomez-Mattoy escrow, which was to be returned to her from escrow after closing pursuant to a written instruction of seller. Mr. Espinoza knew of the fact that Mr. Gomez did not have sufficient funds to pay the costs, and of the fact of the seller's instructions to escrow concerning Duenas's \$7,000. There is no explicit testimony as to the way in which the seller's instructions to escrow in this regard were obtained, but previous documents concerning the sale were presented to the seller by Mr. Espinoza.

7. Escrow closed. The sale was consummated. There is no evidence of any loss to the lender.

8. The lender's principal, broker Harry Bush, was unaware of the details of the loan. It was the lender's custom and practice to require buyers to pay the costs incidental to the transfer of title to real property. Had Bush known that misrepresentations were being made, either by Gomez, or by others acting in his behalf, the loan would not have been made.

Legal Conclusions

Respondents Espinoza, Duenas and Diaz, acted in concert in misrepresenting Mr. Gomez's financial condition to the lender, and in so doing, they, and each of them, made a substantial misrepresentation in connection with the purchase and sale of California real property, within the meaning of Section 10176(a) of the Business and Professions Code.

Allegations in the accusation to the effect that "...[T]he lender may have been damaged financially...as the buyer may not have made all required payments..." and "[T]he buyer may yet default on the loan payments due the lender...." are wholly speculative, unproved, and are therefore disregarded.

Respondents argue that all the principles of a civil action for fraud apply to a case of license discipline. To the extent that the standard of proof is higher than a mere preponderance of evidence, this is true. However, it is not necessary that actual loss, or damage be proved. The making of a "substantial misrepresentation" in connection with acts, or attempted acts, requiring licensure is all that is required.

And here, the misrepresentation is substantial. Mr. Bush testified he would not have made the loan had he known of the misrepresentation. Absent the \$7,000. required, the only cash of Mr. Gomez in the transaction would have been the sum of \$500.00. A borrower's interest this slender would be of concern to any reasonable lender.

In sum, notwithstanding the absence of any evidence of damage, a case for license discipline pursuant to Section 10176(a) has been established by reason of respondents' joint action in creating a record which would lead one to believe that the borrower had sufficient cash on hand to consummate the transaction at issue, and in enabling the transaction to be consummated in a manner contrary to the lender's misplaced confidence in the borrower's ability to make the payment required of him. It is further determined that complainant has proved this case with clear and convincing evidence.

Respondents' lack of any record of prior discipline results in the relatively lenient disciplinary order hereinafter made.

Order

The real estate salesperson's license issued to each of the three respondents is hereby suspended for a period of sixty (60) days beginning on the thirtieth calendar day following the effective date of this Decision.

March 2, 2001



PAUL M. HOGAN
Administrative Law Judge
Office of Administrative Hearings

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FILED
MAR 29 2001
DEPARTMENT OF REAL ESTATE

By *Michael A. Lanphere*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-28762 LA
MARIO CESAR ESPINOZA,)	L-2000110196
MARIBEL DUENAS, and)	
JESUS DIAZ,)	
Respondents.)	

NOTICE

TO: MARIO CESAR ESPINOZA, MARIBEL DUENAS and JESUS DIAZ, Respondents and Charles E. Mashburn, Esq. and Michael A. Lanphere, Esq.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 2, 2001, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 2, 2001, is attached hereto 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

1 February 8, 2001, and any written argument hereafter submitted
2 on behalf of respondent and complainant.

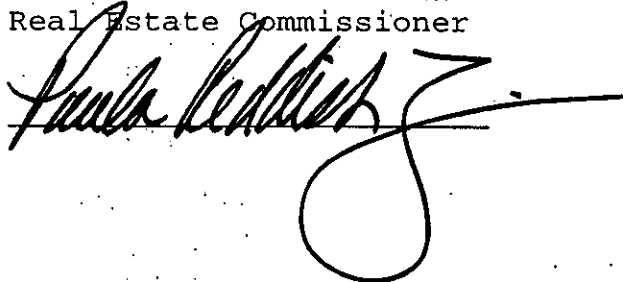
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4 Written argument for respondent to be considered by me
5 must be submitted within 15 days after receipt of the transcript
6 of the proceedings of February 8, 2001, at the Los Angeles
7 office of the Department of Real Estate unless an extension of
8 the time is granted for good cause shown.

9
10 Written argument of complainant to be considered by me
11 must be submitted within 15 days after receipt of the argument
12 of respondent at the Los Angeles office of the Department of
13 Real Estate unless an extension of the time is granted for good
14 cause shown.

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16 DATED:

March 21, 2001.

17 PAULA REDDISH ZINNEBANN
18 Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation Against:)	No. H-28762 LA
)	
MARIO CESAR ESPINOZA,)	OAH No. L-2000110296
MARIBEL DUENAS, and)	
JESUS DIAZ,)	
)	
Respondents.)	
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PROPOSED DECISION

This case was tried before Paul M. Hogan, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on February 8, 2001.

James R. Peel, counsel, represented complainant. Charles E. Mashburn, attorney at law, represented respondent Mario Cesar Espinoza, who appeared personally. Michael A. Lamphere, attorney at law, represented Jesus Diaz and Maribel Duenas, respondents, who appeared personally.

The parties presented oral and documentary evidence and submitted the matter for decision. The Administrative Law Judge proposes:

Factual Findings

1. Complainant, Thomas McCrady, is a Deputy Real Estate Commissioner of the State of California and filed the accusatory pleadings in this matter while acting solely in his official capacity.
2. At all times herein mentioned, respondents above-named were, each and all, licensed by the Department to act as real estate sales persons in the State of California, and were so acting for, and in expectation of, compensation. The licenses are in full force and effect and each respondent has licensing rights incidental thereto.

3. On or about October 20, 1997, respondent Espinoza, acting as a dual agent for seller Mattoy and buyer Gomez, negotiated a sale of residential real estate located at 4058 E. 52d Street, Maywood, California.

4. The terms of the sale required that Mr. Gomez obtain a new first trust deed loan. He did so through Amerimort Financial dba Citimortgage Bancorp, assisted by the lender's agents, respondents Duenas and Diaz.

5. Respondent Diaz assisted Mr. Gomez in preparing his application for a secured real estate loan from the lender. The written loan application was prepared by Diaz, and typed by respondent Duenas. The application stated Mr. Gomez to have "cash saved at home in the sum of \$8,800." (Exhibit 8) The application also stated that Mr. Gomez would be required to pay \$6,623.63 to cover the total costs of the sale of \$143,154.80.

6. Mr. Gomez did not have these monies, and Duenas and Diaz knew this to be so before the escrow closed on December 24, 1997. Duenas put \$7,000.00 of her personal funds in the Gomez-Mattoy escrow, which was to be returned to her from escrow after closing pursuant to a written instruction of seller. Mr. Espinoza knew of the fact that Mr. Gomez did not have sufficient funds to pay the costs, and of the fact of the seller's instructions to escrow concerning Duenas's \$7,000. There is no explicit testimony as to the way in which the seller's instructions to escrow in this regard were obtained, but previous documents concerning the sale were presented to the seller by Mr. Espinoza.

7. Escrow closed. The sale was consummated. There is no evidence of any loss to the lender.

8. The lender's principal, broker Harry Bush, was unaware of the details of the loan. It was the lender's custom and practice to require buyers to pay the costs incidental to the transfer of title to real property. Had Bush known that misrepresentations were being made, either by Gomez, or by others acting in his behalf, the loan would not have been made.

Legal Conclusions

Respondents Espinoza, Duenas and Diaz, acted in concert in misrepresenting Mr. Gomez's financial condition to the lender, and in so doing, they, and each of them, made a substantial misrepresentation in connection with the purchase and sale of California real property, within the meaning of Section 10176(a) of the Business and Professions Code.

Allegations in the accusation to the effect that "...[T]he lender may have been damaged financially...as the buyer may not have made all required payments..." and "[T]he buyer may yet default on the loan payments due the lender...." are wholly speculative, unproved, and are therefore disregarded.

Respondents argue that all the principles of a civil action for fraud apply to a case of license discipline. To the extent that the standard of proof is higher than a mere preponderance of evidence, this is true. However, it is not necessary that actual loss, or damage be proved. The making of a "substantial misrepresentation" in connection with acts, or attempted acts, requiring licensure is all that is required.

And here, the misrepresentation is substantial. Mr. Bush testified he would not have made the loan had he known of the misrepresentation. Absent the \$7,000. required, the only cash of Mr. Gomez in the transaction would have been the sum of \$500.00. A borrower's interest this slender would be of concern to any reasonable lender.


In sum, notwithstanding the absence of any evidence of damage, a case for license discipline pursuant to Section 10176(a) has been established by reason of respondents' joint action in creating a record which would lead one to believe that the borrower had sufficient cash on hand to consummate the transaction at issue, and in enabling the transaction to be consummated in a manner contrary to the lender's misplaced confidence in the borrower's ability to make the payment required of him. It is further determined that complainant has proved this case with clear and convincing evidence.

Respondents' lack of any record of prior discipline results in the relatively lenient disciplinary order hereinafter made.

Order

The real estate salesperson's license issued to each of the three respondents is hereby suspended for a period of sixty (60) days beginning on the thirtieth calendar day following the effective date of this Decision.

March 2, 2001


PAUL M. HOGAN
Administrative Law Judge
Office of Administrative Hearings

NOT ADOPTED

Sacto JLP

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
NOV 28 2000
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

MARIO CESAR ESPINOZA,
MARIBEL DUENAS, and
JESUS DIAZ,

By *R. Wedekind*

Case No. H- 28762 LA

OAH No. L- 2000110296

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 W. Fourth St., Ste. 630
Los Angeles, CA 90013
on February 8 & 9, 2001, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: November 28, 2000

By *James R. Peel*
Counsel

cc: Mario Cesar Espinoza
Maribel Duenas
Jesus Diaz
Charles E. Mashburn, Esq.
Michael A. Lanphere, Esq.
Ernanie Pablo Damo
Omega Financial Services
Ruben A. Diaz
Sacto OAH JP

RE 501 (Rev. 8/97)

Handwritten initials

JAMES R. PEEL, Counsel (SBN 47055)
Department of Real Estate
320 West Fourth Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(213) 576-6913 (Direct)

FILED
SEP 20 2000
DEPARTMENT OF REAL ESTATE

By *A. Wiederholt*

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of)	No. H- 28762 LA
MARIO CESAR ESPINOZA,)	<u>A C C U S A T I O N</u>
MARIBEL DUENAS, and)	
JESUS DIAZ,)	
Respondents.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MARIO CESAR ESPINOZA, MARIBEL DUENAS and JESUS DIAZ, alleges as follows:

I

The Complainant, Thomas McCrady, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against MARIO CESAR ESPINOZA, MARIBEL DUENAS and JESUS DIAZ.

II

MARIO CESAR ESPINOZA, MARIBEL DUENAS and JESUS DIAZ, (hereinafter referred to as respondents are presently licensed

1 and/or have license rights under the Real Estate Law (Part 1 of
2 Division 4 of the Business and Professions Code, hereinafter
3 "Code").
4

5 III

6 At all times herein mentioned, respondents MARIO CESAR
7 ESPINOZA, MARIBEL DUENAS and JESUS DIAZ were licensed by the
8 Department of Real Estate of the State of California as real
9 estate salespersons, acting for compensation and in expectation of
10 compensation.

11 IV

12 On or about October 20, 1997, respondent ESPINOZA
13 negotiated the sale of property located at 4058 E. 52nd Street,
14 Maywood, California, from Thelma M. Mettoy (seller) to Francisco
15 Javier Gomez (buyer). The terms of the sale required, among other
16 things, that the buyer obtain a new first trust deed loan. The
17 buyer obtained his loan from Amerimort Financial dba Citimortgage
18 Bancorp (lender), and respondents DUENAS and DIAZ were at all
19 times herein mentioned employed by the lender as loan agents and
20 arranged for the buyer's loan on the property.

21 V

22 In order to induce the lender to make a loan to the
23 buyer, respondents ESPINOZA, DUENAS and DIAZ conspired among
24 themselves, to misrepresent to the lender that the buyer would
25 deposit \$7,500 of his own money in escrow in order to close the
26 escrow. In fact, the buyer only deposited about \$500 of his own
27 money in escrow. Respondents ESPINOZA, DUENAS and DIAZ failed to
disclose to the lender that the buyer was depositing in escrow



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only \$500 of his own money in order to close escrow. Respondent DUEÑAS actually arranged for a personal loan to the buyer for \$7,000 to enable buyer to close escrow.

VI

The lender relied on the misrepresentations of the respondents and agreed to make a loan to the buyer. If the lender had known the true facts in this matter, the lender would not have agreed to make a loan to the buyer.

VII

The lender may have been damaged financially in this matter as the buyer may not have made all required payments of principal and interest due the lender. The buyer may yet default on the loan payments due the lender.

VIII

The conduct of respondents MARIO CESAR ESPINOZA, MARIBEL DUEÑAS and JESUS DIAZ, as alleged above, subjects their real estate licenses and license rights to suspension or revocation pursuant to Sections 10176(a) and 10176(i) of the Code.

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

Dated at Los Angeles, California
this 20th day of September, 2000.

THOMAS MC CRADY

Deputy Real Estate Commissioner

cc: MARIO CESAR ESPINOZA
MARIBEL DUENAS
JESUS DIAZ
Sacto
JP
Ernanie Pablo Damo
Omega Financial Services Inc.
Ruben A. Diaz

