

BEFORE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

GUSTAVO BERDEJA,

Respondent.

Case No. H-31243 LA

OAH No. L-2004110489

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on February 3, 2005, in Los Angeles. Complainant was represented by James R. Peel, Staff Counsel. Respondent was present and represented himself.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FINDINGS OF FACT

1. The Administrative Law Judge takes official notice that, on July 13, 2004, the Accusation, Case No. H-31243 LA, was made and filed by complainant Maria Suarez in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department).
2. On or about November 27, 1996, the Department issued real estate broker's license no. 01200761 and licensing rights to Gustavo Berdeja (hereinafter respondent). Said license expires on March 5, 2005, unless renewed, and currently is in full force and effect.
3. In or about February 1997, respondent and his brother Alex Berdeja opened a real estate office in Fontana. Respondent was the real estate broker and his brother was the sole licensed real estate salesperson for the business. The name of the firm was "Alexander Real Estate" and respondent filed a "DBA" notice with the Department.

4. On or about September 3, 2002, before the Superior Court of California, County of San Bernardino (Central District), in Pilar Calderon and Raul Marcelo Cruz v. Alexander Berdeja, an individual, and Gustavo Berdeja, doing business as Alexander Real Estate, et al., Case No. SCVSS 076412, respondent was found liable for negligent misrepresentation and ordered to pay a civil judgment of \$20,000.00.

5. (A) The facts and circumstances of the civil judgment were that, in or about January 1999, respondent was doing business as Alexander Real Estate with the main office in Carlsbad. He allowed his brother Alex Berdeja, who was also known as Gilbert Alex Verdeja and a licensed real estate salesperson, to manage an office under the name of Alexander Real Estate.

(B) Alex Berdeja purchased real property in Rialto in the name of the plaintiffs without their knowledge or consent, secured the purchase through a loan, and earned a commission of \$5,000.00. Alex Berdeja concealed the true facts of the purchase from the lender and placed a third party in the property who was directed to make payments in the names of the plaintiffs. As such, the court found Alex Berdeja engaged in acts of fraud and deceit and entered a judgment against respondent's brother for \$20,000.00.

(C) For his part, respondent was the real estate broker for the office when his brother purchased the Rialto property without consent of plaintiffs. The court determined that respondent knew or should have known that his brother's purchase of the property was secured by a loan and that the lender was unaware that his brother bought the property without plaintiffs' consent. Respondent was also determined to have known or should have known that his brother concealed his purchase of the property and placed a third party in the property. The court adjudged that respondent knew or should have known that his brother engaged in fraud and deceit, was guilty of negligent misrepresentation, and liable to plaintiffs for \$20,000.00.

6. On or about July 8, 2003, respondent paid \$10,000.00 to plaintiffs Calderon and Cruz. He had earlier paid them \$5,000.00. On July 14, 2003, plaintiffs filed an Acknowledgment of Satisfaction of Judgment with the Superior Court. Respondent thus has made full satisfaction of the judgment against him in the civil case because plaintiffs accepted payment of a sum other than that specified in the judgment.

7. (A) On November 19, 2003, the Department paid \$2,682.08 from the Real Estate Recovery Fund on account of the civil judgment entered against Alex Berdeja, respondent's brother, in San Bernardino County Superior Court.

(B) On November 25, 2003, the Department notified Alex Berdeja that his real estate salesperson's license was automatically suspended due to the payment

on his account from the Real Estate Recovery Fund. Alex Berdeja has not made any payment to the Department in order to lift the suspension of his license.

(C) Earlier, on July 24, 2003, the Department denied the application of plaintiffs Calderon and Cruz for payment from the Real Estate Recovery Fund on account of the civil judgment against respondent. The Department ruled that the judgment against respondent was based on negligent misrepresentation which did not constitute grounds for payment from the Real Estate Recovery Fund under Business and Professions Code section 10471, subdivision (a).

8. Respondent testified in an honest and forthright manner. He admitted that he "loaned" his broker's license to his brother and did not really supervise his brother's real estate activities. He realizes that he was required to supervise him but his brother is older and was the person who helped and encouraged him to enter the real estate profession. Respondent regrets not having supervised his brother and desires to retain his real estate broker's license.

9. Respondent was first licensed as a real estate salesperson in or about August 1995. His employing broker was First Mutual Mortgage, Inc. A little more than a year later, in November 1996, his real estate salesperson's license was terminated when he was issued his broker's license. Respondent has never worked as a real estate salesperson and he only used his real estate broker's license in 1999 and 2000 when he opened Alexander Real Estate with his brother.

10. Respondent is 33 years old. He is married and has two young children. His spouse is a public school teacher. Respondent is employed as a loan officer with Solutions Real Estate and Mortgage Company.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

CONCLUSIONS OF LAW

1. Grounds exist to revoke or suspend respondent's real estate broker's license under Business and Professions Code section 10177.5 in that a final judgment was entered in a civil case against respondent for fraud, misrepresentation, or deceit with reference to a transaction for which a real estate license was required under the Real Estate Law, based on Findings 3 – 6 above.

2. Discussion--By paying \$15,000.00 to the plaintiffs, respondent fully satisfied the civil judgment entered against him for his negligent misrepresentation in connection with the fraudulent real estate transaction perpetrated and concealed by his brother. Respondent realizes that, as the broker, he was required to supervise the activities of his salesperson brother but he did not do so. Consequently, his brother was able to commit his fraudulent and deceitful real estate transaction. As such, respondent demonstrated negligence in performing acts of a broker and failed to exercise reasonable supervision over the activities over his salesperson. He admits and shows regret and remorse for his conduct. Respondent has always worked in the mortgage loan business and has not worked as a real estate broker or salesperson. If he is to retain a real estate license, it will have to be as a real estate salesperson with appropriate restrictions and supervision to protect the public interest and welfare.

* * * * *

Wherefore, the following Order is hereby made:

ORDER

All real estate licenses and licensing rights previously issued to respondent Gustavo Berdeja are revoked, based on Conclusions of Laws Nos. 1 - 2 above, jointly and for all; provided, however, said order of revocation will be stayed and a restricted real estate salesperson's license will be issued to respondent pursuant to Business and Professions Code Section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision and Order, based on Conclusions of Law no. 2. 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 the authority of Business and Professions Code Section 10156.6:

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

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate

Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

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

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


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

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

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that 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.

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

DATED: March 4, 2005



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

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FILED
DEC 20 2004
DEPARTMENT OF REAL ESTATE
[Handwritten signature]

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation of

GUSTAVO BERDEJA

} (Large bracket symbol grouping the case and OAH numbers)

Case No. H-31243 LA

OAH No. L-2004110489

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 West Fourth Street, Suite 630, Los Angeles, California, on February 3, 2005, at the hour of 1:30 p.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: December 20, 2004

By *James R. Peel*
JAMES R. PEEL, Counsel

cc: Gustavo Berdeja
Sacto.
OAH

5/20/04
File

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
AUG 27 2004
DEPARTMENT OF REAL ESTATE
[Signature]

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-31243 LA
12 GUSTAVO BERDEJA,)	<u>ACCUSATION</u>
13 Respondent.)	
14)	

15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against GUSTAVO BERDEJA, alleges as follows:

18 I

19 The Complainant, Maria Suarez, a Deputy Real Estate
20 Commissioner of the State of California, makes this Accusation in
21 her official capacity against GUSTAVO BERDEJA.

22 II

23 GUSTAVO BERDEJA (hereinafter referred to as
24 "Respondent") is presently licensed and/or has license rights
25 under the Real Estate Law (Part 1 of Division 4 of the Business
26 and Professions Code, hereinafter referred to as the "Code").
27

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

9 Dated at Los Angeles, California,
10 this 13th day of July, 2004.

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14 MARIA SUAREZ
15 Deputy Real Estate Commissioner
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24 cc: Gustavo Berdeja
25 Maria Suarez
26 Sacto.
27 OA