

1 Department of Real Estate
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982

FILED

JUN 25 2007

DEPARTMENT OF REAL ESTATE

BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-32784 LA
12) L-2006080066
13 LUCERO M. FERNANDEZ,)
14 Respondent.) STIPULATION AND AGREEMENT
15) AND
16) DECISION AFTER REJECTION
17)

16 The California Department of Real Estate
17 ("Complainant") filed an Accusation against LUCERO M. FERNANDEZ
18 ("Respondent") on May 3, 2006. On November 1, 2006, a hearing
19 was held and evidence received, the record was closed, and the
20 matter was submitted.

21 On January 26, 2007, the Proposed Decision of the
22 Administrative Law Judge was issued, and determined, among other
23 things, that Respondent's real estate salesperson license should
24 be suspended for thirty (30) days, and that following said
25 suspension, a restricted real estate salesperson license shall
26 be issued to Respondent.

1 On March 9, 2007, the Commissioner notified Respondent
2 that the Proposed Decision of the Administrative Law Judge was
3 not adopted as the Decision of the Real Estate Commissioner.

4 The parties wish to settle this matter without further
5 proceedings.

6 IT IS HEREBY STIPULATED by and between Respondent and
7 Respondent's attorney Frank Buda, Esq., and the Complainant,
8 acting by and through Alvaro Mejia, Counsel for the Department
9 of Real Estate, as follows for the purpose of settling and
10 disposing of the Accusation filed by Complainant.

11 A. It is understood by the parties that the Real
12 Estate Commissioner may adopt the Stipulation and Agreement and
13 Decision After Rejection as his decision in this matter, thereby
14 imposing the penalty and sanctions on Respondent's real estate
15 license and license rights as set forth in the below "Decision
16 and Order." In the event the Commissioner in his discretion
17 does not adopt the Stipulation and Agreement and Decision After
18 Rejection, the Stipulation shall be void and of no effect; the
19 Commissioner will review the transcript and the evidence in the
20 case, and will issue his Decision after Rejection as his
21 Decision in this matter.
22

23 ///

24 ///

25 ///

26 ///

27

1 B. By reason of the foregoing and solely for the
2 purpose of settlement of the Accusation without further
3 administrative proceedings, it is stipulated and agreed that the
4 Factual Findings, which are set out in the Proposed Decision,
5 and which were rejected by the Commissioner on March 6, 2007,
6 are hereby adopted and incorporated by reference herein.

7 C. By reason of the foregoing and solely for the
8 purpose of settlement of the Accusation without further
9 administrative proceedings, it is stipulated and agreed the
10 Commissioner shall adopt the following Order:

11 ORDER

12 WHEREFORE, THE FOLLOWING ORDER is hereby made:

13 All licenses and licensing rights of Respondent
14 LUCERO M. FERNANDEZ under the Real Estate Law are revoked;
15 provided, however, a restricted real estate salesperson license
16 shall be issued to Respondent pursuant to Section 10156.5 of
17 the Business and Professions Code if Respondent makes
18 application therefor and pays to the Department of Real Estate
19 the appropriate fee for the restricted license within 90 days
20 from the effective date of this Decision. The restricted
21 license issued to Respondent shall be subject to all of the
22 provisions of Section 10156.7 of the Business and Professions
23 Code and to the following limitations, conditions and
24 restrictions imposed under authority of Section 10156.6 of that
25 Code:
26
27

1 1. The restricted license issued to Respondent
2 pursuant to this Decision shall be suspended for thirty (30)
3 days from the date of issuance of said restricted license.

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

9 3. The restricted license issued to Respondent may be
10 suspended prior to hearing by Order of the Real Estate
11 Commissioner on evidence satisfactory to the Commissioner that
12 Respondent has violated provisions of the California Real Estate
13 Law, the Subdivided Lands Law, Regulations of the Real Estate
14 Commissioner or conditions attaching to the restricted license.

15 4. Respondent shall not be eligible to apply for
16 issuance of an unrestricted real estate license nor for the
17 removal of any of the conditions, limitations or restrictions of
18 a restricted license until two (2) years have elapsed from the
19 effective date of issuance of this Decision.

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

- 1 (a) That the employing broker has read the
2 Decision of the Commissioner which granted
3 the right to a restricted license; and
4 (b) That the employing broker will exercise
5 close supervision over the performance by
6 the restricted licensee relating to
7 activities for which a real estate license
8 is required.

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

21
22 5/21/07
23 DATED

24 ALVARO MEJIA, Counsel
25 DEPARTMENT OF REAL ESTATE
26
27

* * *

///
26

1 I have read the Stipulation and Agreement and
2 Decision after Rejection and its terms are understood by me
3 and are agreeable and acceptable to me. I understand that I
4 am waiving rights given to me by the California Administrative
5 Procedure Act (including but not limited to Sections 11506,
6 11508, 11509, and 11513 of the Government Code), and I
7 willingly, intelligently, and voluntarily waive those rights,
8 including the right of requiring the Commissioner to prove the
9 allegations in the Accusation at a hearing at which I would
10 have the right to cross-examine witnesses against me and to
11 present evidence in defense and mitigation of the charges.

12
13 5/15/07
DATED

Lucero M. Fernandez
LUCERO M. FERNANDEZ, Respondent

14 I have reviewed the Stipulation and Agreement as to form
15 and content and have advised my client accordingly.

16 DATED: 5.10.07

Frank M. Buda
FRANK BUDA, ESQ.,
Attorney for Respondent

17
18 * * *

19
20 The foregoing Stipulation and Agreement and Decision
21 after Rejection is hereby adopted as my Decision in this matter
22 and shall become effective at 12 o'clock noon on July 16, 2007.

23 IT IS SO ORDERED on 6-20-07

24 JEFF DAVI
Real Estate Commissioner

25
26 [Signature]
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

MAR - 9 2007

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation: of)

No. H-32784 LA

LUCERO M. FERNANDEZ,

L-2006080066

Respondent.)

NOTICE

TO: LUCERO M. FERNANDEZ, Respondent, and FRANK M. BUDA, her
Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated January 26, 2007, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated January 26, 2007, 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 November 1,

///

1 2006, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of November 1, 2006, at the Los Angeles office
6 of the Department of Real Estate unless an extension of the time
7 is granted for good cause shown.

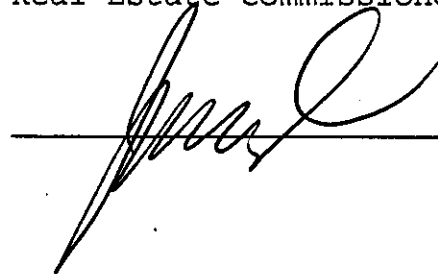
8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: _____

3/6/07

14
15 JEFF DAVI
16 Real Estate Commissioner

17
18
19
20
21
22
23
24
25
26
27



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LUCERO M. FERNANDEZ

Respondent

Case No. H-32784 LA

OAH No.: L2006080066

PROPOSED DECISION

On November 1, 2006, in Los Angeles, California, Deborah Myers, Administrative Law Judge, Office of Administrative Hearings, heard this matter.

Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California (Complainant), was represented by Alvaro Mejia, Staff Counsel.

Respondent, Lucero M. Fernandez (Respondent), was present and was represented by Frank M. Buda, Attorney at Law.

Oral and documentary evidence was received. The record was held open until January 5, 2007, to allow Respondent to submit an Order granting early termination of probation, and for staff counsel to object to the introduction of such evidence. Respondent's counsel submitted a letter indicating that the motion was denied. This letter is marked for identification as Respondent's Exhibit "S." The matter was submitted for decision and the record was closed on January 5, 2007.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. The Accusation was filed by Maria Suarez, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity.

2. Respondent was originally licensed as a real estate salesperson in 1989. Her salesperson's license will expire on February 23, 2010. Complainant seeks to revoke or suspend her license due to her recent criminal conviction.

3. On August 8, 2005, in the United States District Court, Central District of California, Case No. CR04-01242-RMT, Respondent was convicted, on her plea of no contest, of violating United States Code, title 18, section 1010 (false statement to the Department of Housing and Urban Development), a crime of moral turpitude substantially related to the qualifications, functions and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivision (a) (1).

4. Respondent was placed on probation for three years and ordered to pay restitution to HUD in the sum of \$42,557, which she paid on the day she was sentenced. No jail time was ordered.

5. The facts and circumstances underlying the conviction are that in June 2000, Respondent worked as a real estate agent for Maximum Gain Realtors. Respondent knowingly submitted a mortgage application for the purchasers of a property, which contained false and forged employment and income documents. The loan was insured by the Federal Housing Administration, a division of the Department of Housing and Urban Development (HUD). Respondent believed that the buyers that she represented would not qualify for a loan, as the husband's income could not be used for those purposes. Respondent purchased a false W-2 form and false check stubs from a "service," and submitted them to a lender, Executive Mortgage. Respondent intended for the loan company to rely on the documents, to fund the loan, and to close the sale of the property. The loan was approved, the property was purchased, and Respondent received a sales commission. Respondent stated that although her broker supervised the sale of the home, he did not supervise the manner in which she handled the loan.

6. Respondent is remorseful for her conduct and deeply regrets her actions now that she sees she cannot perform her job. Respondent was trying to help a client. She stated emphatically that she would never submit false income documents to a lender again. Respondent has "learned a hard lesson" and had to face her clients, her family, her husband and her daughter, who are now suffering as a result of her criminal actions. She attends church every Sunday at the San Francisco Javier Church in Pico Rivera. She supports her husband and her 20-year old pregnant daughter. Respondent is willing to accept a restricted license to continue working.

7. Respondent was a top producer among the Montebello Board of Realtors for many years. She has many friends and supporters in the real estate industry. Many clients, colleagues, supervisors, family, friends, and a former Chief of Police, either testified at the administrative hearing or wrote letters on her behalf. Generally, they

spoke of her truthfulness, honesty and integrity, her expressions of remorse, and their belief that she will not re-offend.

8. Respondent's immediate supervisor and broker at Realty Master's Arnulfo Ruiz (Ruiz), testified in support of her continued licensure. Respondent has worked closely with him since 2001. Ruiz thinks very highly of Respondent, and has known her for 10 years. He has received only compliments, not complaints, about Respondent from their clients. She spoke to him several times about her conviction, and he still believes she is very honest. Ruiz thought Respondent made a mistake and that she deserves a second chance. Ruiz admitted that there were no safeguards in place to prevent Respondent from committing loan fraud again. He would closely supervise her activities if she were offered a restricted license. Ruiz would accept any conditions on her license.

9. Another manager at Realty Master's, Juan Jose Lopez (Lopez), testified and vouched for Respondent's honesty and truthfulness. He is willing to assist the broker and help supervise her. Lopez has known Respondent for many years and is impressed by her abilities as a real estate salesperson. He is aware of her many awards in the Montebello Board of Realtors. He believes that Respondent has learned her lesson. Lopez believes the best way to prevent loan fraud is for the individual to remain professional. Lopez had received many compliments about Respondent.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to suspend or revoke Respondent's real estate salesperson's license pursuant to Business and Professions Code section 490 and 10177, subdivision (b) for conviction of a crime, as set forth in Findings 3, 4, and 5.

2. Respondent's criminal conviction is very recent and involved moral turpitude. In *Golde v. Fox* (1979) 98 Cal. App. 3d 167 at 176, the court stated: "Honesty and integrity are deeply and daily involved in various aspects of the practice." The integrity of documents and the truthfulness of the licensees involved in real estate transactions are of paramount importance in the industry.

3. Respondent breached the public confidence when she secured and submitted false income documents to a lender. However, from all appearances, this was an aberrant act in Respondent's 17 year career. Several of Respondent's colleagues and supervisors in the industry have testified or written of her honesty and trustworthiness. Her immediate supervisors and her broker believe in her integrity and will supervise her work.

4. Respondent has met many of the Department's criteria of rehabilitation set forth in California Code of Regulations, title 10, section 2912. Six and a half years have passed since her most recent criminal act (Subd. (a).) She paid \$42,557 in restitution to HUD on the day of the hearing. (Subds. (b) and (g).) She is remorseful for her conduct, and has exhibited a change of attitude which existed at the time of the crime. (Subd. (m).) Respondent supports her husband and her pregnant daughter, who live with her. (Subd. (j).) She attends church regularly. (l).)

5. Respondent has not met several of the criteria of rehabilitation. Only 18 months, not two years, have passed since her conviction (Subd. (a).) She has not completed her probation or obtained an expungement (Subd. (c) and (e).)

6. However, Respondent's criminal acts occurred six and a half years ago and appear to be an aberrant act. The guidelines most likely do not contemplate such a long delay between the criminal act and the criminal conviction. Respondent's broker and her supervisor trust her with his clients, and stand behind her. They are aware of her criminal conviction and are willing to continue working with Respondent. They believe in her and are willing to supervise her work and place their license on the line.

Therefore, the public interest will be protected with the following order.

ORDER

WHEREBY THE FOLLOWING ORDER is hereby made:

1. All licenses and licensing rights of Respondent Lucero Fernandez under the Real Estate Law are suspended for a period of thirty days from the effective date of this Decision.

2. After said suspension, a restricted real estate salesperson license shall be issued to Respondent for a period of two years, pursuant to Section 10156.5 of the Business and Professions Code, if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

(A) 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.

(B) 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.

(C) 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.

(D) Respondent shall remain employed by Realty Masters, Arnufu Ruiz, or Juan Jose Lopez. In the event Respondent wishes to change employing brokers, she must seek and receive Department of Real Estate approval.

(E) 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:

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

(2) 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, especially her involvement with her client's financial and loan transactions.

(F) 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 the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Dated: January 26, 2007



DEBORAH MYERS

Administrative Law Judge

Office of Administrative Hearings

ALVARO MEJIA, Counsel (SBN 216956)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6916



By [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H- 32784 LA
LUCERO M. FERNANDEZ,)	<u>A C C U S A T I O N</u>
Respondent.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against LUCERO M. FERNANDEZ, aka Lucero Fernandez, aka Lucero Margarita Sanchez, ("Respondent") alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

///

///

///

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as a real estate salesperson.

3.

On or about August 8, 2005, in the United States District Court, Central District of California, in case no. CR04-01242-RMT, Respondent was convicted of violating Title 18, United States Code, Section 1010 (False Statement to the Department of Housing and Urban Development). The underlying facts of this crime involve moral turpitude, which bear a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

4.

The crime of which Respondent was convicted, as described in Paragraph 3 above, constitutes cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of the license and license rights of Respondent under the Real Estate Law.

///

///

///

///

///

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 the licenses and license rights of
5 Respondent, LUCERO M. FERNANDEZ, under the Real Estate Law (Part
6 1 of Division 4 of the Business and Professions Code) and for
7 such other and further relief as may be proper under other
8 applicable provisions of law.

9 Dated at Los Angeles, California

10 this 28th day of April, 2006.

11 
12 Maria Suarez
13 Deputy Real Estate Commissioner
14
15
16
17
18
19
20
21
22
23
24

25 cc: LUCERO M. FERNANDEZ
26 Paul Aguilar Jr.
27 Maria Suarez
Sacto.
CW