

1 of having completed the Professional Responsibility Examination
2 administered by the Department. The Commissioner has determined
3 that as of January 7, 2011, you have failed to provide evidence
4 of the completion of the Professional Responsibility Examination
5 condition.

6 NOW, THEREFORE, IT IS ORDERED under authority of the
7 Order issued in this matter that the real estate salesperson
8 license heretofore issued to you, Respondent, and the exercise
9 of any privileges thereunder is hereby suspended until such time
10 as you provide proof satisfactory to the Department of
11 compliance with the "conditions" referred to above, or pending
12 final determination made after hearing (see "Hearing Rights" set
13 forth below).

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

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

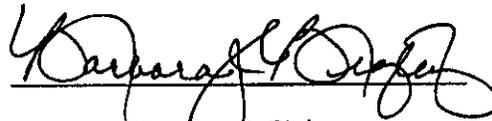
21
22 HEARING RIGHTS: You have the right to a hearing to
23 contest the Commissioner's determination that you are in
24 violation of the Decision issued in this matter. If you desire
25 a hearing, you must submit a written request. The request may
26 be in any form, as long as it is in writing and indicates that
27 you want a hearing. Unless a written request for a hearing,

1 signed by or on behalf of you, is delivered or mailed to the
2 Department at 320 W. 4th Street, Room 350, Los Angeles,
3 California 90013, within 20 days after the date that this Order
4 was mailed to or served on you, the Department will not be
5 obligated or required to provide you with a hearing.

6 This Order shall be effective immediately.

7 DATED: 3/17, 2011.

8 JEFF DAVI
9 Real Estate Commissioner

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11 BY: Barbara J. Bigby
12 Chief Deputy Commissioner

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FILED
JUN 17 2010
DEPARTMENT OF REAL ESTATE

By 

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	DRE Case No. H-35349 LA
)	
LUZAL, INC., dba SMC;)	OAH Case No. 200910724
ALFONSO CHAVEZ, JR., individually and)	
as designated officer of the corporation, dba)	
ALCCO Realty and SMC Mortgage; and)	
RANDY ALVAREZ,)	
)	
Respondents.)	

DECISION AFTER REJECTION

Eric Sawyer, Administrative Law Judge ("ALJ") Office of Administrative Hearings, State of California, heard this matter on December 8, 2009 in Riverside, California.

James R. Peel, Counsel for the Department of Real Estate ("Department"), represented Robin Trujillo, Deputy Real Estate Commissioner ("Complainant").

Mindy G. Kennedy Alvarez, Esq., represented RANDY ALVAREZ ("Respondent ALVAREZ"), who was present at hearing. ALFONSO CHAVEZ, JR. ("Respondent CHAVEZ"), was present and represented himself. No appearance was made by or on behalf of LUZAL, INC., despite due notice of the hearing. The matter therefore proceeded as a default as to LUZAL, INC.

1 Oral and documentary evidence was received. The record was closed and the
2 matter was submitted for decision on December 8, 2009. On January 11, 2010, the ALJ issued a
3 Proposed Decision which I declined to adopt as my Decision herein.

4 Pursuant to Section 11517(c) of the Government Code of the State of California,
5 Respondent was served with notice of my determination not to adopt the Proposed Decision of
6 the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would
7 decide the case upon the record, the transcript of proceedings held on December 8, 2009, and
8 upon written argument offered by Respondents and Complainant. Respondent CHAVEZ, by and
9 through attorney John Setlich, submitted argument on April 8, 2010. Respondent ALVAREZ,
10 through hearing counsel Mindy G. Kennedy Alvarez, submitted argument on April 7, 2010.
11 Complainant submitted argument on April 23, 2010.

12 I have given careful consideration to the record in this case, including the
13 transcript of proceedings of December 8, 2009. I have also considered the arguments submitted
14 by Respondents and by Complainant. The following shall constitute the Decision of the Real
15 Estate Commissioner ("Commissioner") in this proceeding:

16 FINDINGS OF FACT

17 Parties and Jurisdiction

18 1. Complainant brought the Accusation in her official capacity. Respondent
19 ALVAREZ timely submitted a Notice of Defense, which contained a request for a hearing. It
20 was not established that Respondents LUZAL INC. or CHAVEZ submitted Notices of
21 Defense. However, on May 11, 2009, a Notice of Representation and Request for Discovery
22 was submitted on behalf of LUZAL INC. and CHAVEZ by attorney Rick Gaxiola¹. The
23 Department therefore provided both with a hearing on the Accusation.
24

25 2. Respondent CHAVEZ is licensed as a real estate broker. His license is
26 scheduled to expire on March 1, 2012. Respondent CHAVEZ is licensed by the Department
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¹ Mr. Gaxiola did not appear at hearing. However, Respondent CHAVEZ did.

1 to do business under the fictitious business name, or dba, of ALCCO Realty. He has been
2 licensed to do business under the name ALCCO Realty since sometime prior to January 1,
3 2005. On March 15, 2006, Respondent CHAVEZ added the dba SMC Mortgage to his
4 license.

5 3. Respondent LUZAL, INC. is licensed as a corporate real estate broker.
6 Respondent CHAVEZ testified at hearing that he owns LUZAL INC., and he is designated as
7 the broker-officer for Respondent LUZAL, INC.² His officer license expires on
8 October 10, 2010. Respondent LUZAL is licensed to do business as SMC. The corporation
9 has not been conducting business and has been suspended by the Secretary of State.

10 4. Respondent ALVAREZ was originally licensed as a real estate salesperson
11 on December 28, 2006, in the employ of Respondent LUZAL, INC. He is now employed by
12 licensed broker TNT Lending, Inc. His license expires on December 27, 2010.

13 Transactions with Johnny Hernandez, Jr.

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15 5. In 2005, Johnny Hernandez, Jr. sold his home and became interested in
16 purchasing a new home. He contacted Respondent ALVAREZ about financing of the new
17 home. At hearing, Mr. Hernandez testified that he and Respondent ALVAREZ were
18 previously friends, but had lost contact with each other for approximately ten years.
19 Mr. Hernandez said that in 2005, he was referred to Respondent ALVAREZ by a friend. He
20 met with Respondent ALVAREZ at ALVAREZ' home. At the time, ALVAREZ was
21 involved in investing in real estate. ALVAREZ advised Mr. Hernandez about a way to make
22 20-30 percent profit by buying homes with little or no deposit and selling them one year later
23 at a price higher than when they were bought. Mr. Hernandez testified that Respondent
24

25
26 ²Pursuant to Business and Professions Code section 10159.2, Respondent Chavez was
27 responsible for the supervision and control of the activities conducted on behalf of the
corporation by its officers and employees as necessary to secure full compliance with the
provisions of the Real Estate Law.

1 ALVAREZ also counseled him to find tenants to rent the properties to pay the mortgages
2 before they were resold. Respondent ALVAREZ then referred Mr. Hernandez to Respondent
3 CHAVEZ to complete any such transactions.

4 6. Respondent ALVAREZ did not show any properties to Mr. Hernandez, did
5 not prepare any paperwork for him, did not quote any property prices or loan amounts, and he
6 did not ask for compensation from Mr. Hernandez. He did, however, provide Mr. Hernandez
7 with a business card with his name on it, and the name of Respondent CHAVEZ' business,
8 ALCCO Realty.³

9 7. At the time he met with Mr. Hernandez in 2005, Respondent ALVAREZ was
10 not licensed by the Department in any capacity. He had a business relationship with Respondent
11 CHAVEZ through his property investments, some of which he transacted with Respondent
12 CHAVEZ. Respondent ALVAREZ also referred other business to Respondent CHAVEZ. It was
13 not established that he had any employment relationship with either LUZAL, INC. or
14 Respondent CHAVEZ during this time.

15 8. Mr. Hernandez ultimately purchased several properties in 2005, including the
16 following three investment properties, none of which were his primary residence:

17 (a) A home located at 26336 Meridian Street, Hemet, California, for
18 \$356,500. The loan closed on October 26, 2005, with Argent Mortgage Company financing the
19 full \$356,500 debt in the form of a first mortgage for \$285,200 and a second for \$71,300.

20 (b) A home located at 25010 Penang Drive, Hemet, California, for
21 \$357,000. The loan closed on October 27, 2005, with Resmae Mortgage Corporation financing
22 the full \$357,000 debt in the form of a first mortgage for \$285,600 and a second \$71,400.

23 (c) A home located at 1364 Pepper Tree Drive, Hemet, California, for
24 \$355,000. The loan closed on October 27, 2005, with First Franklin financing the full \$355,000
25 debt in the form of a first mortgage for \$284,000 and a second for \$71,000.

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27 ³ At hearing, the business card was ruled admissible, but was not moved into evidence.

1 9. Respondents LUZAL, INC. and CHAVEZ acted as the loan brokers for each
2 of the three subject loan transactions described in Paragraph 8 above, and received commissions
3 and yield spread premiums at the closing for brokering the loans. In addition, Respondent
4 CHAVEZ, dba ALCCO Realty, received a sales commission for acting as selling agent in
5 relation to the purchase and sale of each of the properties. It was not established that
6 Respondent ALVAREZ conducted activities requiring a real estate license for any of the subject
7 transactions.

8 10. In connection with each of the three subject loan transactions described in
9 Paragraph 8, Respondent CHAVEZ obtained Mr. Hernandez' signature on Uniform Residential
10 Loan Applications (Form 1003s). Each application represented to the lenders that each property
11 was being purchased as Mr. Hernandez' primary residence (as distinct from secondary
12 residences or investment properties). Respondent CHAVEZ signed and dated each of the loan
13 applications on October 19, 2005, and indicated that each was taken by him as a result of a face-
14 to-face interview with Mr. Hernandez. Mr. Hernandez' signature was dated the same date:
15 October 19, 2005.

16 11. There is no dispute that Respondent ALVAREZ and Respondent CHAVEZ
17 had an ongoing business relationship as of 2005, and that ALVAREZ referred Mr. Hernandez to
18 CHAVEZ specifically for assistance in purchasing investment properties to turn around and sell
19 within a year or two in order to generate a profit. Mr. Hernandez testified that in addition to the
20 sale and purchase of a home, he purchased 5 properties as investments through CHAVEZ and
21 ALCCO.

22 12. Based on the above, Respondent CHAVEZ knew or should have known that
23 the three loans were funded by the lenders under the false premise that each property would be
24 Mr. Hernandez' primary residence. Due to the higher risk related to investment properties, and
25 Mr. Hernandez' financial profile, it is unlikely that the lenders would have approved these loans
26 for the granted terms had it been disclosed that Mr. Hernandez was taking out multiple loans to
27 ///

1 purchase multiple properties, and that the subject properties were investment properties and not
2 Mr. Hernandez' primary residence.

3 13. By December of 2005, Mr. Hernandez was unable to pay the mortgages on
4 the various properties he purchased. He did not make any of the mortgage payments and his
5 loans went into default. He complained to Respondents ALVAREZ and CHAVEZ about the
6 situation. Respondent ALVAREZ helped him find others to take over the mortgage payments,
7 while Mr. Hernandez agreed to transfer title of the properties by quit claim deeds. However,
8 Mr. Hernandez was responsible for the various mortgages and his credit was damaged by these
9 events.

10 14. Based on the above, it was not established that Respondent ALVAREZ
11 solicited and negotiated the three above-described loans for Mr. Hernandez⁴.

12 Other Relevant Facts

13 15. Respondent ALVAREZ was hired by Respondent CHAVEZ and became
14 employed by LUZAL, INC. after he obtained his real estate salesperson license in December of
15 2006. Within six months, Respondent ALVAREZ bought out Respondent CHAVEZ. He later
16 became affiliated with licensed broker TNT Lending, Inc. under conditions not established.

17 16. Through SMC Mortgage, Respondent CHAVEZ received loan
18 commissions, loan origination fees and yield spread premiums on the three above-described
19 transactions. Through ALCCO Realty, Respondent CHAVEZ received a commission on the
20 purchases of the three properties. After the real estate market began to decline, the businesses
21 became defunct and Respondent CHAVEZ sold the rest of his business interests to Respondent
22 ALVAREZ, as described above.

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26 ⁴Pursuant to Business and Professions Code section 10131, subdivision (d), a real estate broker's
27 license is required to solicit borrowers or lenders or to negotiate loans or collect payments or
perform services for borrowers or lenders or note owners in connection with loans secured by
real property.

1 applications containing the false information that Mr. Hernandez intended to use each of the
2 three subject matter properties as his primary residence. Those loan applications were later
3 forwarded to the involved lenders, who relied on them in funding the loans. (Factual Findings
4 1-17.)

5 3. Cause was not established for disciplinary action against the real estate
6 salesperson license of Respondent ALVAREZ pursuant to section 10177, subdivisions (j), (f),
7 and (d), for violation of section 10130 (unlicensed real estate activity). More specifically, it was
8 not established that Respondent ALVAREZ engaged in acts requiring a real estate license with
9 regard to the three Hernandez transactions. It was also not established that Respondent
10 ALVAREZ had a financial interest in the real estate businesses which were paid a commission
11 (Factual Findings 1-16.)

12 4. The focus of the Accusation are allegations that Respondents LUZAL,
13 INC. and CHAVEZ employed and/or compensated an unlicensed person, Respondent
14 ALVAREZ, with regard to the three Hernandez transactions. Those allegations were not
15 established. Since no cause for discipline was established against Respondent ALVAREZ, the
16 Accusation should be dismissed against him. Respondents LUZAL, INC. and CHAVEZ do not
17 bear any responsibility relative to those allegations. However, it was established that those two
18 Respondents allowed and/or facilitated false representations that Mr. Hernandez made on his
19 three loan applications regarding his using each of the properties as his primary residence.
20 Thus, cause for discipline was established against those two Respondents as set forth in Legal
21 Conclusions No. 2, above.

22 5. Respondent LUZAL, INC. is now an inactive real estate brokerage
23 corporation, suspended by the Secretary of State, that defaulted at the instant hearing. No
24 reason was established to warrant less discipline than outright revocation of the corporate
25 license.

26 6. The ALJ found that the circumstances as to Respondent CHAVEZ warrant
27 less than outright revocation of his license. In the ALJ's view, CHAVEZ' misconduct was

1 negligent, and reflected a failure to properly supervise licensed activity. However, as the
2 designated broker-officer of LUZAL, INC., and a seasoned real estate professional, Respondent
3 CHAVEZ was well aware of the significance of submitting three (3) loan applications for a
4 "primary residence" when in fact the borrower was applying for multiple loans with which to
5 purchase investment property. Mr. Hernandez came to Respondent CHAVEZ and ALCCO
6 Realty at the recommendation of Respondent ALVAREZ with the express interest in obtaining
7 loans for investment property. Respondent CHAVEZ signed three separate applications for the
8 same borrower dated the same day as the responsible "interviewer" for the subject loans.
9 (Factual Findings 1-17.)

10 7. The Real Estate Law and the disciplinary procedures provided for in the Real
11 Estate Law are designed to protect the public and to achieve the maximum protection for the
12 purchasers of real property and those dealing with real estate licensees. Honesty and truthfulness
13 are among the attributes necessary for applicants to qualify for a real estate license. (*Business
14 and Professions Code Section 10152*). The Legislature intended to ensure that real estate
15 licensees will be honest, truthful and worthy of the fiduciary responsibilities which they will
16 bear. (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; *Golde v. Fox* (1976) 98 Cal.App.3d 167,
17 177; *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Real estate
18 licensees act as fiduciaries in their dealings with the public. Clients rely on the licensee's
19 integrity in representing them, disclosing important facts about the properties he or she is privy
20 to, and holding money and other personal property in a fiduciary capacity. Respondent
21 CHAVEZ was less than honest in his conduct as responsible broker in the subject loan
22 transactions. Both his client, Mr. Hernandez, and the lenders relied on his representations in the
23 loan application to their detriment. For these reasons, the following Order is warranted in this
24 case to protect the public health, safety and welfare.

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ORDERS

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1.

The Accusation against Respondent RANDY ALVAREZ is dismissed.

2.

All licenses and licensing rights of Respondent LUZAL, INC., dba SMC, under the Real Estate Law are revoked.

3.

All licenses and licensing rights of Respondent ALFONSO CHAVEZ , JR., individually and as designated officer of the corporation, dba ALCCO Realty and SMC Mortgage, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code 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. 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:

(1) Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for 14 days from the date of issuance of said restricted license.

(2) 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.

(3) 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

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1 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
2 license.

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

6 (5) Respondent shall submit with any application for license under an
7 employing broker, or any application for transfer to a new employing broker, a statement signed
8 by the prospective employing real estate broker on a form approved by the Department of Real
9 Estate which shall certify:

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

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

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

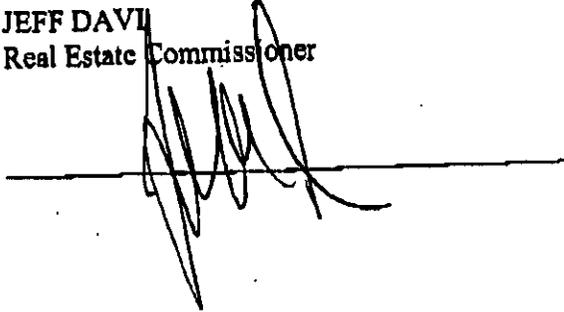
23 (7) Respondent shall, within six months from the effective date of this Decision,
24 take and pass the Professional Responsibility Examination administered by the Department
25 including the payment of the appropriate examination fee. If Respondent fails to satisfy this
26 condition, the Commissioner may order suspension of Respondent's license until Respondent
27 passes the examination.

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This Decision shall become effective at 12 o'clock noon on JUL - 7 2010

IT IS SO ORDERED JUN 16 2010

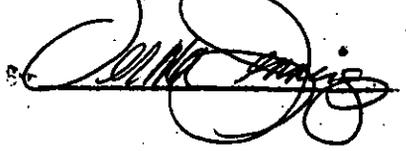
JEFF DAVI
Real Estate Commissioner



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DEPARTMENT OF REAL ESTATE



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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

LUZAL, INC., dba SMC;
ALFONSO CHAVEZ, JR., individually and as
designated officer of the corporation, dba
ALCCO Realty and SMC Mortgage; and
RANDY ALVAREZ,

Respondents.

No. H-35349 LA
OAH No. 2009010724

NOTICE

TO: LUZAL, INC., ALFONSO CHAVEZ, JR., and RANDY ALVAREZ, Respondents, and
MINDY G. KENNEDY ALVAREZ, Counsel for Randy Alvarez.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated
January 11, 2010, of the Administrative Law Judge is not adopted as the Decision of the Real
Estate Commissioner. A copy of the Proposed Decision dated January 11, 2010, is attached for
your information.

In accordance with Section 11517(e) 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 December 8, 2009, any written
argument hereafter submitted on behalf of Respondents and Complainant.

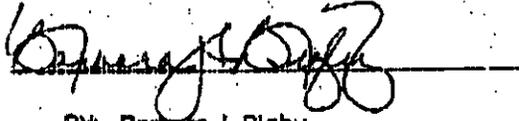
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Written argument of Respondents to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of December 8, 2009, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

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

DATED: 2/11/10

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

LUZAL, INC., dba SMC;
ALFONSO CHAVEZ, JR., individually and
as designated officer of the corporation, dba
ALCCO Realty and SMC Mortgage;
and **RANDY ALVAREZ**,

Respondents.

Case No. H-35349 LA

OAH No. 2009010724

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 8, 2009, in Riverside. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

James R. Peel, Counsel, represented Robin L. Trujillo, Deputy Real Estate Commissioner (Complainant), California Department of Real Estate (Department).

Mindy G. Kennedy Alvarez, Esq., represented Randy Alvarez (Respondent Alvarez), who was present. Alfonso Chavez, Jr. (Respondent Chavez) was present and represented himself. No appearance was made by or behalf of Luzal, Inc., despite due notice of the hearing. The matter therefore proceeded as a default as to Luzal, Inc.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity. Respondent Alvarez timely submitted a Notice of Defense, which contained a request for a hearing. It was not established that Respondents Luzal, Inc. or Chavez submitted Notices of Defense, although the Department nonetheless provided both with a hearing on the Accusation.
2. Respondent Chavez is licensed as a real estate broker. His license is scheduled to expire on March 1, 2012. He previously did business as ALCCO Realty and as SMC Mortgage, although both of those businesses are now defunct.
3. Respondent Luzal, Inc. was licensed as a real estate broker on July 27, 1998, and it later did business as SMC Mortgage. The license will expire on October 10, 2010. The corporation has been inactive and has been suspended by the Secretary of State.

4. Respondent Chavez was designated as the responsible officer for Respondent Luzal, Inc.¹ His officer license expires on October 10, 2010.

5. Respondent Alvarez was originally licensed as a real estate salesperson on December 28, 2006, in the employ of Respondent Luzal, Inc. He is now employed by licensed broker TNT Lending, Inc. His license expires on December 27, 2010.

Transactions with Johnny Hernandez, Jr.

6. In 2005, Johnny Hernandez, Jr. sold his home and became interested in purchasing a new home and other investment properties. He was referred to Respondent Alvarez by a friend. Mr. Hernandez and Respondent Alvarez were previously friends, but they had lost contact with each other for approximately ten years.

7. Mr. Hernandez discussed the situation at Respondent Alvarez's home. Respondent Alvarez at the time was involved in investing in real estate. He advised Mr. Hernandez about a way to make 20-30 percent profit by buying homes with little or no deposit and selling them one year later at a price higher than when they were bought. Respondent also counseled Mr. Hernandez to find tenants to rent the properties to pay the mortgages before they were resold. Respondent Alvarez referred Mr. Hernandez to Respondent Chavez to complete any such transactions. Respondent Alvarez did not show any properties to Mr. Hernandez, did not prepare any paperwork for him, did not quote any property prices or loan amounts, and he did not ask for compensation from Mr. Hernandez.

8. At this time, Respondent Alvarez was not licensed by the Department in any capacity. He had a business relationship with Respondent Chavez through his property investments, some of which he transacted with Respondent Chavez. Respondent Alvarez also referred other business to Respondent Chavez. It was not established that he had any employment relationship with either Luzal, Inc. or Respondent Chavez during this time.

9. Mr. Hernandez ultimately purchased several properties in 2005, including the following three investment properties, none of which were his primary residence:

A. A home located at 26336 Meridian Street, Hemet, California, for \$356,500. The loan closed on October 26, 2005, with Argent Mortgage Company financing the full \$356,500 debt in the form of a first mortgage for \$285,200 and a second for \$71,300.

B. A home located at 25010 Penang Drive, Hemet, California, for \$357,000. The loan closed on October 27, 2005, with Resmae Mortgage Corporation financing the full \$357,000 debt in the form of a first mortgage for \$285,600 and a second \$71,400.

¹ Pursuant to Business and Professions Code section 10159.2, Respondent Chavez was responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

C. A home located at 1364 Pepper Tree Drive, Hemet, California, for \$355,000. The loan closed on October 27, 2005, with First Franklin financing the full \$355,000 debt in the form of a first mortgage for \$284,000 and a second for \$71,000.

10. Respondents Luzal, Inc. and Chavez acted as the mortgage broker for each of the three transactions and received commissions at the closing for the loans. It was not established that Respondent Alvarez acted in that capacity for any of those transactions.

11. Mr. Hernandez represented to the lenders on the loan documents for all three transactions that each property would be his primary residence. Respondent Chavez signified on the loan applications that each was taken by him as a result of a face-to-face interview with Mr. Hernandez. However, the relevant paperwork was drafted by Respondent Chavez's staff and he did not carefully review it before giving it to Mr. Hernandez to sign.

12. Based on the above, Respondent Chavez knew or should have known that Mr. Hernandez closed on the three loans under the false premise that each property would be his primary residence.

13. Due to the higher risk related to investment properties, it is unlikely that the lenders would have approved these loans for the granted terms had it been disclosed that the subject properties were investment properties and not Mr. Hernandez's primary residence.

14. By December of 2005, Mr. Hernandez was unable to pay the mortgages on the various properties he purchased. He did not make any of the mortgage payments and his loans went into default. He complained to Respondents Alvarez and Chavez about the situation. Respondent Alvarez helped him find others to take over the mortgage payments, while Mr. Hernandez agreed to transfer title of the properties by quit claim deeds. However, Mr. Hernandez was responsible for the various mortgages and his credit was damaged by these events.

15. Based on the above, it was not established that Respondent Alvarez solicited and negotiated the three above-described loans for Mr. Hernandez.²

Other Relevant Facts

16. Respondent Alvarez was hired by Respondent Chavez and became employed by Luzal, Inc. after he obtained his real estate salesperson license in December of 2006. Within six months, Respondent Alvarez bought out Respondent Chavez. He later became affiliated with licensed broker TNT Lending, Inc. under conditions not established.

² Pursuant to Business and Professions Code section 10131, subdivision (d), a real estate broker's license is required to solicit borrowers or lenders or to negotiate loans or collect payments or perform services for borrowers or lenders or note owners in connection with loans secured by real property. All further statutory references are to the Business and Professions Code.

17. Through SMC Mortgage, Respondent Chavez received loan commissions, loan origin fees and yield spread premiums on the three above-described transactions. Through ALCOO Realty, Respondent Chavez received a commission on the purchases of the three properties. After the real estate market began to decline, the businesses became defunct and Respondent Chavez sold the rest of his business interests to Respondent Alvarez, as described above.

18. Respondent Chavez now is employed as a broker for an office of Remax. He has been licensed by the Department since the early 1990s (initially as a real estate salesperson). He has no prior record of discipline with the Department. He is active in his community through his involvement in some of his grandchildren's school events. During the hearing, Respondent Chavez testified that he shares some of the responsibility for the poor outcome experienced by Mr. Hernandez. He was also quick to observe that everyone involved in the national mortgage loan crisis also bears some responsibility for the bad loans that were made. He also emphasized that Mr. Hernandez knew, or should have known, of the risks he was taking when he speculated on real estate as he did, and that therefore Mr. Hernandez also shares responsibility for his own unfortunate circumstances.

LEGAL CONCLUSIONS

1. *First Cause for Discipline.* Cause was not established for disciplinary action against the real estate broker licenses of Respondents Luzal, Inc. and Chavez pursuant to sections 10176, subdivision (a), and 10177, subdivisions (f) and (d), for violation of section 10137 (unlawful employment or payment of compensation). More specifically, it was not established that Respondent Alvarez, who was then unlicensed, was employed or compensated, directly or indirectly, by Respondents Luzal, Inc. or Chavez with regard to the three Hernandez transactions. (Factual Findings 1-15.)

2. *Second Cause for Discipline.* Cause was established for disciplinary action against the real estate broker licenses of Respondents Luzal, Inc. and Chavez pursuant to section 10177, subdivisions (d) [willful violation of the Real Estate Law], (g) [negligence in performing an act for which a license is required], and (h) [failure to exercise reasonable supervision and control over activities of the corporation for which a real estate license is required], in that those Respondents failed to ensure full compliance with the Real Estate Law in violation of section 10159.2. More specifically, Respondent Chavez, personally and as the designated officer of Luzal, Inc., facilitated the completion of loan applications containing the false information that Mr. Hernandez intended to use each of the three subject matter properties as his primary residence. Those loan applications were later forwarded to the involved lenders, who relied on them. (Factual Findings 1-17.)

3. *Third Cause for Discipline.* Cause was not established for disciplinary action against the real estate salesperson license of Respondent Alvarez pursuant to section 10177, subdivisions (j), (f), and (d), for violation of section 10130 (unlicensed real estate activity). More specifically, it was not established that Respondent Alvarez engaged in acts requiring a real estate license with regard to the three Hernandez transactions. (Factual Findings 1-16.)

4A. *Discipline.* The focus of the Accusation are allegations that Respondents Luzal, Inc. and Chavez employed and/or compensated an unlicensed person, i.e. Respondent Alvarez, with regard to the three Hernandez transactions. Those allegations were not established. Since no cause for discipline was established against Respondent Alvarez, the Accusation should be dismissed as against him. Respondents Luzal, Inc. and Chavez do not bear any responsibility relative to those allegations. However, it was established that those two Respondents allowed and/or facilitated false representations that Mr. Hernandez made on his three loan applications regarding his using each of the properties as his primary residence. Thus, cause for discipline was established against those two Respondents.

4B. Respondent Luzal, Inc. is now a defunct real estate brokerage corporation, suspended by the Secretary of State, that defaulted at the instant hearing. No reason was established to warrant less discipline than outright revocation of the corporate license. However, the circumstances as to Respondent Chavez warrant less than outright revocation of his license. His misconduct is that of negligence and failure to properly supervise licensed activity. Respondent Chavez has accepted some responsibility for his errors and omissions in this matter. He has no other record of discipline with the Department. He is no longer operating a corporate brokerage on his own. Under these circumstances, it is unlikely that he will commit similar misconduct in the future. For these reasons, the following Order is warranted in this case to protect the public health, safety or welfare. (Factual Findings 1-18.)

ORDER

The Accusation against Respondent Randy Alvarez is dismissed.

All licenses and licensing rights of Respondent Luzal, Inc., dba SMC, under the Real Estate Law are revoked.

All licenses and licensing rights of Respondent Alfonso Chavez, Jr. under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent 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:

1. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for 14 days from the date of issuance of said restricted license.
2. 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.

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3. 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.

4. 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.

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 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.

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 suspension of Respondent's license until Respondent passes the examination.

DATED: January 11, 2010



ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

not adopted

SACD.
Flag

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6 -or- (213) 576-6913 (Direct)

FILED
SEP 26 2008
DEPARTMENT OF REAL ESTATE
[Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-35349 LA
12 LUZAL, INC., dba SMC;) A C C U S A T I O N
13 ALFONSO CHAVEZ, JR.,)
14 individually and as)
15 designated officer of)
16 the corporation, dba)
17 ALCCO Realty and SMC)
Mortgage; and)
RANDY ALVAREZ,)
Respondents.)

18 The Complainant, Robin L. Trujillo, a Deputy Real
19 Estate Commissioner of the State of California, for cause of
20 accusation against LUZAL, INC., dba SMC; ALFONSO CHAVEZ, JR.,
21 individually and as designated officer of the corporation, dba
22 ALCCO Realty and SMC Mortgage; and RANDY ALVAREZ alleges as
23 follows:

24 1.

25 The Complainant, Robin L. Trujillo, acting in her
26 official capacity as a Deputy Real Estate Commissioner of the
27 State of California, makes this Accusation against LUZAL, INC.,

1 ALFONSO CHAVEZ, JR., and RANDY ALVAREZ.

2 2.

3 LUZAL, INC., ALFONSO CHAVEZ, JR., individually and as
4 designated officer of said corporation, and RANDY ALVAREZ
5 (hereinafter referred to as "Respondents") are presently licensed
6 and/or have license rights under the Real Estate Law (Part 1 of
7 Division 4 of the Business and Professions Code, hereinafter
8 Code).

9 3.

10 Respondent LUZAL, INC., was originally licensed as a
11 real estate broker on July 27, 1998. The corporate license will
12 expire on October 10, 2010. Pursuant to Code Section 10159.2,
13 Respondent ALFONSO CHAVEZ, JR., is responsible for the
14 supervision and control of the activities conducted on behalf of
15 the corporation by its officers and employees as necessary to
16 secure full compliance with the provisions of the Real Estate
17 Law, including the supervision of salespersons licensed to the
18 corporation in the performance of acts for which a real estate
19 license is required.

20 4.

21 At all times material herein, Respondent RANDY ALVAREZ
22 was not licensed by the Department of Real Estate. Respondent
23 ALVAREZ was licensed as a real estate salesperson on or about
24 December 28, 2006.

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5.

At all times material herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(d) of the Code, including soliciting borrowers and lenders and negotiating loans on real property.

6.

Respondent RANDY ALVAREZ, in expectation of compensation, solicited and negotiated the following loans for borrower, Johnny Hernandez, Jr., while employed by Respondents LUZAL, INC., and ALFONSO CHAVEZ, JR. Said activities require a real estate license under Code Section 10131(d).

7.

Hernandez purchased a property at 26336 Meridian Street, Hemet, California, for \$356,500. The loan closed on October 26, 1005, with Argent Mortgage Company financing the full \$356,500 debt in the form of a first mortgage for \$285,200 and a second for \$71,300.

8.

Hernandez purchased another property located at 25010 Penang Drive, Hemet, California, for \$357,000. The loan closed on October 27, 2005, with Resmae Mortgage Corporation financing the full \$357,000 debt in the form of a first mortgage for \$285,600 and a second for \$71,400.

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9.

Hernandez purchased another property at 1364 Pepper Tree Drive, Hemet, California, for \$355,000. The loan closed on October 27, 2005, with First Franklin financing the full \$355,000 debt in the form of a first mortgage for \$284,000 and a second for \$71,000.

10.

Respondents acted as the mortgage broker and received a commission at closing for the loans.

11.

Hernandez represented to the lenders that the property would be his primary residence.

12.

Based on the above, it can reasonably be determined that Respondents knew Hernandez closed on the loans under the premise that each property would be his primary residence.

13.

Due to the higher risk related to investment properties, it is unlikely that the lenders would have approved these loans for the granted terms had Respondents disclosed that the subject properties were investment properties.

14.

The conduct, acts and/or omissions of Respondents LUZAL, INC., and ALFONSO CHAVEZ, JR., as alleged above, subject their real estate licenses and license rights to suspension or revocation pursuant to Code Sections 10176(a), 10177(f) and 10177(d) for violation of Code Section 10137.

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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 LUZAL, INC., dba SMC; ALFONSO CHAVEZ, JR., individually and as designated officer of the corporation, dba ALCCO Realty and SMC Mortgage; and RANDY ALVAREZ 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 25 day of September, 2008.



ROBIN L. TRUJILLO
Deputy Real Estate Commissioner

cc: Luzal, Inc.
Alfonso Chavez, Jr.
Randy Alvarez
Robin L. Trujillo
Sacto.
Phil Ihde