

*Handwritten notes:*  
Kings  
File

**FILED**

JUN - 6 2012

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

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

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of  
  
FAST LOANS, INC.; DAVID MARIO  
RAMIREZ and RUBEN A. DIAZ,  
individually and as designated officer  
of the corporation,  
  
Respondents.

No. H-36126 LA  
OAH No. 2011031625

In the Matter of the Accusation of  
  
REMAX EMPIRE INC.; DAVID MARIO  
RAMIREZ individually and as former  
Designated officer of Remax Empire, Inc.,  
and RUBEN A DIAZ, individually and as  
designated officer of Remax Empire, Inc.,  
  
Respondents.

No. H-37335 LA  
OAH No. 2011080790

NOTICE

TO: FAST LOANS, INC., REMAX EMPIRE, INC., and RUBEN A. DIAZ, Respondents.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated  
March 1, 2012, of the Administrative Law Judge is not adopted as the Decision of the Real  
Estate Commissioner. A copy of the Proposed Decision dated March 1, 2012, is attached for  
your information.

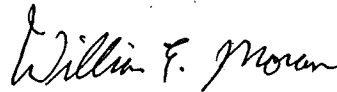
1 In accordance with Section 11517(c) of the Government Code of the State of  
2 California, the disposition of this case will be determined by me after consideration of the record  
3 herein including the transcript of the proceedings held on October 12, 2011, and any written  
4 argument hereafter submitted on behalf of Respondent and Complainant.

5 Written argument of Respondents to be considered by me must be submitted  
6 within 15 days after receipt of the transcript of the proceedings of October 12, 2011, at the  
7 Los Angeles office of the Department of Real Estate unless an extension of the time is granted  
8 for good cause shown.

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

12 DATED: April 20, 2012

13 Real Estate Commissioner

14 

15  
16 By WILLIAM E. MORAN  
17 Assistant Commissioner, Enforcement  
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:

FAST LOANS, INC.; DAVID MARIO  
RAMIREZ and RUBEN A. DIAZ,  
individually and as designated officer of the  
corporation,

Respondents.

Case No. H-36126 LA

OAH Case No. 2011031625

In the Matter of the Accusation Against:

REMAX EMPIRE INC.; DAVID MARIO  
RAMIREZ individually and as former  
designated officer of Remax Empire Inc.; and  
RUBEN A. DIAZ, individually and as  
designated officer of Remax Empire Inc.

Respondents.

Case No. H-37335 LA

OAH Case No. 2011080790

**PROPOSED DECISION**

Administrative Law Judge, Michael A. Scarlett, Office of Administrative Hearings, State of California, heard these consolidated matters on October 12, 2011, in Los Angeles, California.

James Peel, Staff Counsel, represented Robin Trujillo and Maria Suarez, Deputy Real Estate Commissioners of the State of California (Complainants).

Ruben A. Diaz (Respondent) was present at hearing and represented himself.

Oral and documentary evidence was received and the matter was submitted for decision on October 12, 2011.

**FACTUAL FINDINGS**

1. On July 7, 2009, Complainant Maria Suarez issued the Accusation against Respondents Fast Loans, Inc. (Fast Loans), David Mario Ramirez (Ramirez), and Ruben A.

Diaz (Diaz) in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate (Department), State of California. On July 13, 2011, Complainant Robin Trujillo issued the Accusation against Remax Empire, Inc. (REI), Ramirez, and Diaz in his official capacity as a Deputy Real Estate Commissioner of the Department. Respondent Ramirez filed Notices of Defense with the Department on September 22, 2009, and June 28, 2011. Respondent Diaz filed a Notice of Defense on August 13, 2009, to the Fast Loans Accusation, but did not file a Notice of Defense to the REI Accusation. On August 16, 2011, Complainants filed a motion to consolidate these matters for hearing and decision and Respondents did not oppose. These matters were consolidated for hearing and decision on September 29, 2011, and this hearing ensued.

2. On October 12, 2011, the Department and Respondent Ramirez entered into a stipulation and settlement agreement, and the hearing did not proceed as to Respondent Ramirez. Respondents REI and Fast Loans were not represented at hearing and did not file Notices of Defense. The Department established effective service of the Notices of Hearing to the corporations at their addresses of record and the Accusations against the corporation licenses proceeded as a default pursuant to Government Code section 11520. Respondent Diaz proceeded to hearing as the designated officer of Respondents Fast Loans and REI, and individually in defense of his real estate broker's license.

3. On February 5, 2007, the Department issued Fast Loans corporation license number C/01788435. On February 28, 2008, Respondent Diaz was added as the designated officer for Fast Loans effective on April 9, 2008. According to the license certification, Fast Loans' corporation license was due to expire on February 4, 2011. On February 5, 2007, the Department issued REI corporation license number C/01788429. Respondent Diaz was added as designated officer for REI on February 28, 2008. According to the license certification, REI's corporation license expired on February 4, 2011. Respondent Diaz was issued a real estate salesperson license on September 8, 1995, and the Department issued his broker license, number B/01201202, on April 7, 1997.

4. At all times relevant to the allegations contained in the consolidated Accusations issued against Fast Loans and REI, both corporations operated out of an office located at 2444 West Beverly Boulevard, Montebello, California 90640.

#### Respondent Fast Loans

5. On April 29, 2009, Surender Bhalia (Bhalia), General Auditor II for the Department, completed an examination of Fast Loans' books and records for the period covering July 1, 2007 through October 31, 2008. An audit report was prepared by Bhalia on that date which detailed multiple violations of the Real Estate Law committed by Fast Loans. Bhalia testified at hearing in support of his audit report. Fast Loans provided no evidence at hearing to controvert the audit report or Bhalia's testimony. Walter Terrones and Angelo Terrones, father and son, are the owners of Fast Loans. According to the April 29, 2009 audit report, Angelo Terrones was the President of Fast Loans and sole shareholder of 100 percent of Fast Loans stock. However, the audit report indicated that Walter Terrones was

the “unofficial” owner of Fast Loans. Neither Angelo nor Walter Terrones filed a Notice of Defense on behalf of Fast Loans or appeared at hearing.

6. Respondent Diaz, the only Respondent to appear at hearing, acted as the designated officer for Fast Loans from April 9, 2008, until approximately October 2008, although the Department’s license certification indicated that his term as designated officer expired on February 4, 2011. Diaz testified that he had no knowledge of the transactions alleged in the Department’s Accusation against Fast Loans and that he did not process any real estate sales or mortgage loan transactions through Fast Loans, either as designated officer or real estate broker. Consequently, Bhalia’s testimony and the April 29, 2009 audit report are uncontroverted and deemed sufficient to establish the allegations contained in the Department’s July 7, 2009 Accusation against Fast Loans. The Department’s allegations in the July 7, 2009 Accusation against Fast Loans, Paragraphs Four (IV) through Seven (VII), are therefore incorporated by reference pursuant to Government Code section 11425.50, subdivision (b), and establish a factual basis to impose discipline against Fast Loans pursuant to Business and Professions Code section 10177, subdivision (d). (The Accusation is found in Exhibit I).

Respondent REI

7. On July 29, 2009, Chona T. Soriano (Soriano), General Auditor II for the Department, completed an examination of REI’s books and records for the period covering July 1, 2007 through March 31, 2009. An audit report prepared by Soriano on that date detailed multiple violations of the Real Estate Law, committed by REI during the course of its real estate escrow activities. Soriano testified at hearing in support of the July 29, 2009 audit report. There was no evidence offered by REI at hearing to controvert the audit report or Soriano’s testimony. The owner of REI was Angelo Terrones. According to the July 29, 2009 audit report, Angelo Terrones was the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) of REI and sole shareholder of 100 percent of REI stock. The audit report indicated that Respondent Diaz was the Vice President and designated officer for REI. Angelo Terrones did not file a Notice of Defense on behalf of REI, nor did he appear at hearing.

8. Respondent Diaz acted as the designated officer for REI from February 28, 2008, until approximately May 2009, although the Department’s license certification indicated that his term as designated officer expired on February 4, 2011. Diaz testified that he had no involvement with the escrow transactions/activities alleged in the Department’s Accusation against REI and Respondent Ramirez. There were no escrow transactions processed through REI after March 1, 2008, and Respondent Diaz had no knowledge of any prior escrow activities processed through REI before he became designated officer on February 28, 2008. Respondent Diaz testified that REI was divided into an “escrow division” and a “real estate sales division.” He stated that he worked solely in the real estate sales division, and had no knowledge of escrow transactions or escrow accounts for REI. Consequently, Soriano’s testimony and the July 29, 2009 audit report are uncontroverted and deemed sufficient to establish the allegations contained in the Department’s July 13, 2011

Accusation against REI. The Department's allegations against REI, Paragraphs Six through Ten of the Accusation, are therefore incorporated by reference pursuant to Government Code section 11425.50, subdivision (b), and establish a factual basis to impose discipline pursuant to Business and Professions Code sections 10177, subdivision (d). (The Accusation is found in Exhibit 1).

Respondent Diaz

9. Respondent Diaz began working with REI on February 28, 2008. He was approached by his brother, Ernesto Diaz, about taking over the REI "franchise" from prior qualifying broker and designated officer Respondent Ramirez. According to Respondent Diaz, REI had three separate divisions: Fast Loans, a mortgage loan division, REI escrow division, and REI real estate sales division. Respondent Diaz testified that his sole function with REI was to set-up the "real estate sales division," even though he admitted being the designated officer for Fast Loans and REI, effective February 28, 2008, and April 9, 2008, respectively. He testified that he received no compensation for any business processed through Fast Loans or REI, and that he had no signing authority for bank accounts or checks written from either the general or trust accounts for Fast Loans or REI. When Respondent Diaz became designated officer for REI, the building in which the corporation was located was empty. Respondent Diaz testified that Fast Loans was not in operation and that there were no employees working in the REI "escrow division." Although Angelo Terrones was listed as the owner REI and Fast Loans, Respondent Diaz believed Walter Terrones owned the corporations, and the building in which the corporations were located.

10. The Department's audit period for Fast Loans was July 2007 through October 31, 2008. Although Respondent Diaz asserted that he had no knowledge of any real estate loan or mortgage transactions processed through Fast Loans, Respondent Diaz became the designated officer for Fast Loans beginning April 9, 2008. Therefore Respondent Diaz is responsible for violations arising out of any Fast Loans transactions from April 9, 2008 until October 31, 2008.

11. The April 29, 2009 audit report prepared by auditor Bhatia indicated that Fast Loans collected advance fees and/or due diligence fees from prospective commercial loan borrowers Leap of Faith Church, \$3,500 on April 22, 2008, and Woodruff Wireless, \$2,900 on May 2, 2008. Both of these transactions occurred during Respondent Diaz's tenure as designated officer of Fast Loans. Fast Loans collected these advance fees and deposited them in its East West Bank, general account no. 00-83222851, not a trust account as required by Real Estate Law for client/borrower funds. Fast Loans did not have an open trust account at the time the Leap of Faith Church and Woodruff Wireless advance fees were collected. Auditor Bhatia's audit revealed that Fast Loans' only trust account, East West Bank, trust account no. 00-80206832, was closed on January 31, 2008. Thus, Fast Loans commingled borrowers' trust funds with broker funds in Fast Loans' general bank account. All of Fast Loans books and records were not provided to the Department and auditor Bhatia was unable to definitively determine who had signing authority on the Fast Loans bank accounts.

However, Respondent Diaz admitted being the designated officer of Fast Loans from April 9, 2008 through at least October 2008.

12. Fast Loans also failed to maintain the columnar records of all trust funds received and disbursed with regards to the advance fees collected from Leap of Faith Church and Woodruff Wireless. No accounting records were maintained to show how these advance fees were received and disbursed. Fast Loans failed to maintain a separate record of trust funds received and disbursed for each beneficiary or transaction as it related to the Leap of Faith Church and Woodruff Wireless advance fee transactions. Fast Loans also did not perform a monthly reconciliation of control records to separate records for the audit period July 1, 2007 through October 31, 2008. Finally, Fast Loans failed to submit to the Department's Commissioner for approval advance fee materials used in collecting fees from proposed borrowers within ten (10) days of their use as required by Real Estate Laws. The deficiencies related to the Leap of Faith Church and Woodruff Wireless transactions in the April 29, 2009 audit report occurred during Respondent's Diaz's tenure as designated officer of Fast Loans.

13. The April 29, 2009 audit report revealed that Oralia M. Quintero (a.k.a. Claudia Quintero) conducted licensed activities on behalf of Fast Loans from September 2007 through June 2008, without first obtaining a license from the Department. Fast Loans paid Quintero commissions and fees on multiple real estate transactions including, a \$300 diligence fee for the Woodruff Wireless transaction on May 20, 2008. Specifically, as it relates to Respondent Diaz, Quintero received the \$2,900 in advance fees from Woodruff Wireless on May 2, 2008, even though she was not licensed to conduct real estate transactions by the Department.

14. In November 2008, auditor Bhatia requested Respondent Diaz to provide trust account files and records to the Department to assist in completing the audit of Fast Loans for the pertinent audit period. Bhatia testified that after interviewing Respondents Diaz and Ramirez, and serving Respondent Diaz with a subpoena for Fast Loans records, he was unable to secure all the requested Fast Loans records from the designated officers. According to Bhatia, he worked primarily with Ernesto Diaz, rather than Respondent Diaz, in trying to obtain the records for the audit. Respondent Diaz testified that he cooperated and provided all the documents he was able to locate regarding Fast Loans' trust accounts and real estate loan transactions. He asserted that several of the files containing the records had been stolen from Fast Loans' offices and were not available for production. Fast Loans failed to retain all of the records required by the Department to be retained for the audit period July 1, 2007 through October 31, 2008.

15. Fast Loans failed to correctly process several Mortgage Loan Disclosure Statements (MLDS) during the period from July 1, 2007 through October 31, 2008. Although these violations are found to be grounds to discipline the Fast Loans corporate license, the deficiencies in the MLDS's were all in transactions that occurred prior to Respondent Diaz becoming the designated officer of Fast Loans, and therefore would not provide grounds to discipline Respondent Diaz.

16. The Department also alleged several violations to be attributed to Respondent Diaz because the violations occurred while he acted as the designated officer for REI. Specifically, Department's auditor Soriano through her audit determined that REI's trust account, East West Bank trust account no. 83224543, had a trust fund discrepancy as of March 31, 2009, in the amount of <\$13,882>. According to the July 29, 2009 audit report, for the period July 1, 2007 through March 31, 2009, Soriano was not able to review all of REI's trust account records because Respondents failed to provide all of the records for the audit period. In fact, Soriano was only able to review records from December 2007 through February 2008. A review of the transactions that caused the trust fund account discrepancies revealed that they were all transactions that occurred prior to Respondent Diaz becoming REI's designated officer on February 28, 2008. Both Respondent Diaz and Soriano testified that there were no escrow transactions processed by REI after March 1, 2008. Consequently, the discrepancies in the REI trust account would necessarily have been caused by transactions occurring prior to Respondent Diaz becoming the designated officer on February 28, 2008. Thus, even though Respondent Diaz, as designated officer, is technically responsible for any discrepancies in REI's trust account as of March 31, 2009, the last day of the audit period, those discrepancies existed at the time he assumed his position as designated officer of REI and no further escrow activities were processed by REI during his tenure as designated officer of REI.

17. Soriano's audit of REI's books and records also revealed that REI used the fictitious business name "Remax Empire" to conduct real estate transactions without first obtaining a license from the Department to conduct business under that fictitious name. Soriano relied upon Respondent's Diaz's Independent Contract Agreement which referenced "Remax Empire" as an entity in the agreement. Respondent Diaz testified that he was unaware that "Remax Empire" was being used by REI and that he had not used that name while performing real estate sales activities on behalf of REI.

18. REI also failed to maintain real estate salesperson's license certificates in its business office for Jesus Diaz, Marcio Montoya, and Patrick Ramirez. Respondent admitted at hearing that the license certificates were not in the REI offices at the time the audit was performed.

19. REI and Respondent Diaz also failed to retain, and provide upon request from the Department's auditor, records of real estate transactions, including bank statements and cancelled checks from REI's trust account, when requested during the audit of REI's books and records. Respondent Diaz was aware that the Department had served a subpoena for the REI records, and tried to cooperate with the Department's requests. But, he admitted that many of the records requested were not provided to the Department, either because they were not in his possession or he had no knowledge of the existence of the documents requested.

20. The sole focus of Respondent Diaz's activities while acting as designated officer for the two corporations was to set up the "real estate sales division" for REI, even though he admitted being designated officer for Fast Loans and REI. Respondent Diaz



essentially became the designated officer for both Fast Loans and REI as a favor for his brother, Ernesto, who was a sales representative for REI before Respondent Diaz became the designated officer in February 2008. Apparently, Respondent Diaz agreed to become the designated officer without inquiring about, or investigating how, both corporations were set up and what their source of business had been.

21. Respondent Diaz did not attempt to review the financial statements, books, or records of either Fast Loans or REI before agreeing to become the designated officer. Furthermore, after learning that Fast Loans had a negative reputation in the industry in September or October 2008, Respondent Diaz agreed to continue as the designated officer for Fast Loans and REI, even though he testified he severed his business relationship with both corporations in October 2008. He allowed his broker license to be used for purposes of the designated officer because his brother, Ernesto, wanted to continue working for REI. Respondent Diaz's brother continued working for REI until October 2010. In essence, Respondent Diaz subrogated his responsibilities as the designated officer for both Fast Loans and REI, choosing instead to focus solely on prospective real estate sales transactions for REI. After experiencing unsuccessful results in real estate sales activity from February to October 2008, primarily because of the real estate market downturn in 2008, Respondent simply walked away from REI, leaving his broker license with the corporation and the remaining real estate salespersons unsupervised or unmonitored.

22. Neither Fast Loans nor REI were conducting real estate transactions as of the hearing date in this matter. As of the date of hearing, Respondent Diaz was not using his real estate salesperson license, but was employed as a sales representative in another capacity unrelated to real estate.

23. Respondent Diaz has no history of prior disciplinary action by the Department.

### LEGAL CONCLUSIONS

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

1. Business and Professions Code<sup>1</sup> section 10177 provides that:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

---

<sup>1</sup> All further statutory references are to the Business and Professions code unless otherwise noted.

[¶]....[¶]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

[¶]....[¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

2. Cause exists to revoke Respondent Fast Loans' real estate corporation license pursuant to sections 10176, subdivision (e), and 10177, subdivisions (d) and (h), in that Fast Loans acted in violation of the Code and the California Code of Regulations, Title 10, Chapter 6, hereinafter (Regulations), by reason of Factual Findings 5 and 6.

3. Cause exists to revoke Respondent REI's real estate corporation license pursuant to section 10177, subdivisions (d) and (h), in that REI acted in violation of the Code and Regulations, by reason of Factual Findings 7 and 8.

4. Cause exists to suspend or revoke Respondent Diaz's real estate broker's license pursuant to sections 10146, 10176, subdivision (e), 10085, and 10177, subdivision (d), and sections 2832, 2972, and 2970 of the Regulations, in that, with respect to the Fast Loans Woodruff Wireless and Leap of Faith Church transactions, he collected advance fees and failed to deposit the fees in a trust account, thereby commingling broker fees/funds with money or property of prospective borrowers, failed to maintain or provide itemized accounting for the fee/funds collected to the prospective borrowers, and failed to provide advance fee materials to the Commissioner for approval, by reason of Factual Findings 9 through 15.

5. Cause exists to suspend or revoke Respondent Diaz's real estate broker's license pursuant to sections 10177, subdivision (d), and sections 2831, 2831.1, and 2831.2 of the Regulations, in that, with regards to the Fast Loans Woodruff Wireless and Leap of Faith Church transactions, he failed to maintain a columnar record of trust funds received, failed to maintain a separate record of trust funds received and disbursed for each beneficiary or transaction for the Woodruff Wireless and Leap of Faith Church transactions, and failed to

perform monthly reconciliations of trust fund records, by reason of Factual Findings 9 through 15.

6. Cause exists to suspend or revoke Respondent Diaz's real estate broker's license pursuant to sections 10137 and 10177, and subdivision (d), in that he allowed Claudia Quintero to collect advance fees in the Fast Loans Woodruff Wireless transaction even though she was unlicensed by the Department, by reason of Factual Findings 11 through 13.

7. Cause exists to suspend or revoke Respondent Diaz's real estate broker's license pursuant to sections 10159.5 and section 2731, in that REI used the fictitious name "Remax Empire" to conduct real estate activities without first obtaining a license from the Department to conduct business under that name, by reason of Factual Finding 17.

8. Cause exists to suspend or revoke Respondent Diaz's real estate broker's license pursuant to sections 10159.2 and 10177, subdivision (h), and section 2725 of the Regulations, in that he failed to exercise reasonable supervision over the activities of Respondents Fast Loans and REI while serving as the designated officer of both corporations, by reason of Factual Findings 9 through 22.

9. Cause exists to suspend or revoke Respondent Diaz's real estate broker's license pursuant to sections 10160 and section 2753 of the Regulations, in that he failed to maintain the real estate salesperson's certificates in the main business office for REI two of his real estate salespersons, by reason of Factual Finding 18.

10. Cause does not exist to suspend or revoke Respondent Diaz's real estate broker's license pursuant to sections 10240, 10241, and 10235.4, in that he was not the designated officer of Fast Loans when transactions involving Mortgage Loan Disclosure Statement violations occurred, by reason of Factual Findings 5, 6, and 15.

11. Cause does not exist to suspend or revoke Respondent Diaz's real estate broker's license pursuant to section 10145, and section 2832.1 and 2951 of the Regulations, in that he was not the designated officer of REI when the deficiencies in the REI escrow trust account arose, and there was no new or additional escrow transactions while Respondent was the designated officer for REI, by reason of Factual Findings 7, 8, and 16.

### Discussion

12. Respondent Diaz essentially contends that, although he agreed to become the designated officer for both Fast Loans and REI, his primary purpose in joining REI was to build the real estate sales business. He asserts he had no knowledge or responsibility for Fast Loans' mortgage loan activity or REI real estate escrow transaction. However, Section 10159.2, subdivision (a), provides that the designated officer of a corporate broker licensee shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by officers and employees of the corporation to secure full compliance with the Real Estate Laws. Respondent Diaz may not simply disregard his obligations and duties

as the designated officer of Fast Loans and REI by claiming he was not aware of, or given authority by the owners of the corporations over, the activities of the mortgage loan and escrow divisions. Fast Loans and REI corporate licensees are required to have a designated officer/broker to oversee the real estate activities of its salespersons and employees. Respondent understood that his broker license was being used for that purpose.

13. While Respondent Diaz acted as designated officer for Fast Loans, advance fees were collected by employees of Fast Loans and deposited into the general bank account for the corporation. Section 10176, subdivision (e), provides that the Commissioner may temporarily suspend or permanently revoke a real estate license where the licensee has commingled with his or her own money or property the money or other property of others which is received and held by him or her. The advance fees collected from Leap of Faith Church and Woodruff Wireless in April and May 2008, constituted the commingling of prospective borrowers funds with the funds of the corporate licensee because the advance fees were not deposited into a trust account. Section 10146 requires a real estate broker who collects an advance fee to deposit the advance fee into a trust account with a bank or other recognized depository, and not treat those funds as the funds of the licensee. Respondent Diaz and Fast Loans failed to adhere to this requirement. In addition, section 10085 provides that any or all materials used in obtaining advance fee agreements be submitted to the Commissioner for approval at least 10 calendar days before they are used. There is no evidence that Fast Loans or Respondent Diaz complied with this requirement.

14. Respondent Diaz failed to comply with Real Estate Laws and Regulations in performing his duties as designated officer of Fast Loans and REI. He failed to ensure proper documentation of transactions by the corporations and generally did not supervise the activities or employees of the corporations as is required by law for the designated officer.

15. More troubling for the Department, however, is that when Respondent Diaz discovered that Fast Loans had a negative reputation in the community, he disassociated himself from Fast Loans and REI, but allowed his broker license to be used by the corporations and serve as designated officer, even though he was not actually involved in the daily real estate activities of either corporation. This arrangement apparently went on until approximately October 2010, when Respondent's brother Ernesto Diaz, eventually severed ties with REI.

16. The Department met its burden in establishing that Respondents Fast Loans, REI and Diaz are subject to disciplinary action as a result of the conduct in the aforementioned Factual Findings and Legal Conclusions.

### ORDER

1. All licenses and licensing rights of Respondent Fast Loans, Inc., License No. C/01788435, under the Real Estate Law are revoked.

ADOPTED

2. All licenses and licensing rights of Respondent Remax Empire, Inc., License No. C/01788429, under the Real Estate Law are revoked.

3. All licenses and licensing rights of Respondent Ruben A. Diaz, License No. B/01201202 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 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. 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 two years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until 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.

5. 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

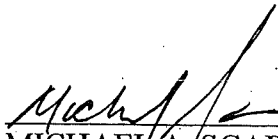
*Not  
Adopted*

Commissioner may order suspension of Respondent's license until Respondent passes the examination.

6. Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

Not  
Adopted

DATED: March 1, 2012

  
MICHAEL A. SCARLETT  
Administrative Law Judge  
Office of Administrative Hearings