

FILED
SEP - 7 2010
DEPARTMENT OF REAL ESTATE

- 1 -

1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedure Act ("APA"), shall instead and in place thereof be
4 submitted solely on the basis of the provisions of this
5 Stipulation and Agreement ("Stipulation").

6 2. Respondents have received, read and understand the
7 Statement to Respondent, the Discovery Provisions of the APA and
8 the Accusation filed by the Department of Real Estate in this
9 proceeding.

10 3. Respondents timely filed a Notice of Defense
11 pursuant to Section 11506 of the Government Code for the purpose
12 of requesting a hearing on the allegations in the Accusation.
13 Respondents hereby freely and voluntarily withdraw said Notice of
14 Defense. Respondents acknowledge that they understand that by
15 withdrawing said Notice of Defense they thereby waive their right
16 to require the Commissioner to prove the allegations in the
17 Accusation at a contested hearing held in accordance with the
18 provisions of the APA and that they will waive other rights
19 afforded to them in connection with the hearing such as the right
20 to present evidence in their defense the right to cross-examine
21 witnesses.

22 4. Respondents, pursuant to the limitations set forth
23 below, hereby admit that the factual allegations in Paragraphs 3
24 through 6, and 9 of the Accusation filed in this proceeding are
25 true and correct and the Real Estate Commissioner shall not be
26 required to provide further evidence of such allegations.

27

1 5. It is understood by the parties that the Real
2 Estate Commissioner may adopt the Stipulation as his Decision in
3 this matter, thereby imposing the penalty and sanctions on
4 Respondents' real estate licenses and license rights as set forth
5 in the below "Order". In the event that the Commissioner in his
6 discretion does not adopt the Stipulation, it shall be void and
7 of no effect, and Respondents shall retain the right to a hearing
8 and proceeding on the Accusation under all the provisions of the
9 APA and shall not be bound by any admission or waiver made
10 herein.

11 6. The Order or any subsequent Order of the Real
12 Estate Commissioner made pursuant to this Stipulation shall not
13 constitute an estoppel, merger or bar to any further
14 administrative or civil proceedings by the Department of Real
15 Estate with respect to any matters which were not specifically
16 alleged to be causes for accusation in this proceeding.

17 7. Respondents understand that by agreeing to this
18 Stipulation, they agree to pay, pursuant to Business and
19 Professions Code Section 10148, the cost of audit which led to
20 this disciplinary action. The amount of said cost for the audit
21 is \$3,511.10.

22 8. Respondents have received, read, and understand the
23 "Notice Concerning Costs of Subsequent Audit." Respondents
24 further understand that by agreeing to this Stipulation, the
25 findings set forth below in the Determination of Issues become
26 final, and the Commissioner may charge Respondents for the cost
27 of any subsequent audit conducted pursuant to Business and

1 Professions Code Section 10148 to determine if the violations
2 have been corrected. The maximum cost of the subsequent audit
3 will not exceed \$3,511.10.

4 DETERMINATION OF ISSUES

5 By reason of the foregoing stipulations, admissions and
6 waivers and solely for the purpose of settlement of the pending
7 Accusation without a hearing, it is stipulated and agreed that
8 the following determination of issues shall be made:

9 I

10 The conduct, acts or omissions of Respondent DIVINA
11 REALTY INC., as described in Paragraphs 6 of the Accusation, are
12 in violation of Sections 10145, 10146, 10176(e), 10085, 10146,
13 and 10240 of the Business and Professions Code ("Code") and
14 Sections 2831, 2831.1, 2832, 2835, 2970, and 2972, of Title 10,
15 Chapter 6 of the California Code of Regulations and is a basis
16 for the suspension or revocation of Respondent DIVINA REALTY
17 INC.'s license and license rights as a violation of the Real
18 Estate Law pursuant to Code Sections 10176(e) and 10177(g).

19 II

20 The conduct, acts or omissions of FABY LLERANDI, as
21 described in Paragraphs 6 and 9 of the Accusation, during the
22 period of March 24, 2009, through May 31, 2009, constitute a
23 failure to keep DIVINA REALTY INC. in compliance with the Real
24 Estate Law during the time that she was the officer designated by
25 a corporate broker licensee, in violation of Code Section
26 10159.2. This conduct is a basis for the suspension or
27 revocation of Respondent FABY LLERANDI's license pursuant to Code

1 Sections 10177(g) and 10177(h).

2 ORDER

3 WHEREFORE, THE FOLLOWING ORDER is hereby made:

4 I

5 All licenses and licensing rights of Respondent
6 DIVINA REALTY INC. under the Real Estate Law are revoked;
7 provided, however, a restricted real estate corporation license
8 shall be issued to Respondent DIVINA REALTY INC. pursuant to
9 Section 10156.5 of the Business and Professions Code if
10 Respondent makes application therefor and pays to the Department
11 of Real Estate the appropriate fee for the restricted license
12 within 90 days from the effective date of this Decision. The
13 restricted license issued to Respondent shall be subject to all
14 of the provisions of Section 10156.7 of the Business and
15 Professions Code and to the following limitations, conditions and
16 restrictions imposed under authority of Section 10156.6 of the
17 Code:

18 1. The restricted license issued to Respondent DIVINA
19 REALTY INC. may be suspended prior to hearing by Order of the
20 Real Estate Commissioner on evidence satisfactory to the
21 Commissioner that Respondent DIVINA REALTY INC. has violated
22 provisions of the California Real Estate Law, the Subdivided
23 Lands Law, Regulation of the Real Estate Commissioner or
24 conditions attaching to this restricted license.

25 2. Respondent DIVINA REALTY INC. shall not be eligible
26 to apply for the issuance of an unrestricted real estate license
27 nor for the removal of any of the conditions, limitations or

1 restrictions of a restricted license until one (1) year has
2 elapsed from the effective date of this Decision.

3 3. Pursuant to Section 10148 of the Business and
4 Professions Code, Respondent DIVINA REALTY INC. and Respondent
5 FABY LLERANDI shall jointly or severally pay the Commissioner's
6 reasonable cost for: a) the audit which led to this disciplinary
7 action and b) a subsequent audit to determine if Respondent
8 DIVINA REALTY INC. has corrected the trust fund violations found
9 in Paragraph I of the Determination of Issues. In calculating
10 the amount of the Commissioner's reasonable cost, the
11 Commissioner may use the estimated average hourly salary for all
12 persons performing the audits of real estate brokers, and shall
13 include an allocation for travel time to and from the auditor's
14 place of work. The cost of the audit which led to this
15 disciplinary action is \$3,511.10. Said amount for the prior and
16 subsequent audits shall not exceed \$7,022.20. Respondents DIVINA
17 REALTY INC. and FABY LLERANDI shall jointly or severally pay such
18 cost within 60 days of receiving an invoice from the Commissioner
19 detailing the activities performed during the audit and the
20 amount of time spent performing those activities. The
21 Commissioner may suspend the restricted license issued to
22 Respondent DIVINA REALTY INC. pending a hearing held in
23 accordance with Section 11500, et seq., of the Government Code,
24 if payment is not timely made as provided for herein, or as
25 provided for in a subsequent agreement between the Respondent and
26 the Commissioner. The suspension shall remain in effect until
27 payment is made in full or until Respondent DIVINA REALTY INC.

1 enters into an agreement satisfactory to the Commissioner to
2 provide for payment, or until a decision providing otherwise is
3 adopted following a hearing held pursuant to this condition.

4 II

5 All licenses and licensing rights of Respondent
6 FABY LLERANDI under the Real Estate Law are revoked; provided,
7 however, a restricted real estate broker license shall be issued
8 to Respondent FABY LLERANDI pursuant to Section 10156.5 of the
9 Business and Professions Code if:

10 a) Respondent FABY LLERANDI, prior to and as a
11 condition of the issuance of the restricted license, submit proof
12 satisfactory to the Commissioner of having taken and successfully
13 completed the continuing education course on trust fund
14 accounting and handling specified in subdivision (a) of Section
15 10170.5 of the Business and Professions Code. Proof of
16 satisfaction of this requirement includes evidence that
17 Respondent has successfully completed the trust fund account and
18 handling continuing education course within 120 days prior to the
19 effective date of the Decision in this matter.

20 b) Respondent makes application for a restricted
21 broker license and pays to the Department of Real Estate the
22 appropriate fee for the restricted license within 90 days from
23 the effective date of this Decision.

24 c) The restricted license issued to Respondent shall
25 be subject to all of the provisions of Section 10156.7 of the
26 Business and professions Code and to the following limitations,
27 conditions and restrictions imposed under authority of Section

1 10156.6 of the Code:

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

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

15 3. Respondent Faby LLERANDI shall not be eligible to
16 apply for the issuance of an unrestricted real estate license nor
17 for the removal of any of the conditions, limitations or
18 restrictions of a restricted license until one (1) year has
19 elapsed from the effective date of this Decision.

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

1 suspension of the restricted license until the Respondent
2 presents such evidence. The Commissioner shall afford Respondent
3 the opportunity for a hearing pursuant to the Administrative
4 Procedure Act to present such evidence.

5 5. Pursuant to Section 10148 of the Business and
6 Professions Code, Respondent Faby Llerandi and Respondent Divina
7 Realty Inc. shall jointly or severally pay the Commissioner's
8 reasonable cost for: a) the audit which led to this disciplinary
9 action and b) a subsequent audit to determine if Respondent
10 Divina Realty Inc. has corrected the trust fund violations found
11 in Paragraph I of the Determination of Issues. In calculating
12 the amount of the Commissioner's reasonable cost, the
13 Commissioner may use the estimated average hourly salary for all
14 persons performing the audits of real estate brokers, and shall
15 include an allocation for travel time to and from the auditor's
16 place of work. The cost of the audit which led to this
17 disciplinary action is \$3,511.10. Said amount for the prior and
18 subsequent audits shall not exceed \$7,022.20. Respondents Faby
19 Llerandi and Divina Realty Inc. shall jointly or severally pay
20 such cost within 60 days of receiving an invoice from the
21 Commissioner detailing the activities performed during the audit
22 and the amount of time spent performing those activities. The
23 Commissioner may suspend the restricted license issued to
24 Respondent Faby Llerandi pending a hearing held in accordance
25 with Section 11500, et seq., of the Government Code, if payment
26 is not timely made as provided for herein, or as provided for in
27 a subsequent agreement between the Respondent and the

1 Commissioner. The suspension shall remain in effect until
2 payment is made in full or until Respondent FABY LLERANDI enters
3 into an agreement satisfactory to the Commissioner to provide for
4 payment, or until a decision providing otherwise is adopted
5 following a hearing held pursuant to this condition.

6 6. Respondent FABY LLERANDI shall, within six (6)
7 months from the effective date of the Decision herein, take and
8 pass the Professional Responsibility Examination administered by
9 the Department including the payment of the appropriate
10 examination fee. If Respondent fails to satisfy this condition,
11 the Commissioner may order suspension of Respondent's license
12 until Respondent passes the examination.

13 DATED: 8/11/10

Lisette Garcia
LISSETE GARCIA, Counsel for
the Department of Real Estate
* * *

15
16 EXECUTION OF THE STIPULATION

17 We have read the Stipulation and discussed it with our
18 counsel. Its terms are understood by us and are agreeable and
19 acceptable to us. We understand that we are waiving rights given
20 to us by the California Administrative Procedure Act (including
21 but not limited to Sections 11506, 11508, 11509 and 11513 of the
22 Government Code), and we willingly, intelligently and voluntarily
23 waive those rights, including the right of requiring the
24 Commissioner to prove the allegations in the Accusation at a
25 hearing at which we would have the right to cross-examine
26 witnesses against us and to present evidence in defense and
27

mitigation of the charges.

Respondents (1) shall mail the original signed signature page of the stipulation herein to Lissete Garcia:

Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105.

Additionally, Respondents shall also (2) facsimile a copy of signed signature page, to the Department at the following telephone/fax number: (213) 576-6917, Attention: Lissete Garcia.

A facsimile constitutes acceptance and approval of the terms and conditions of this Stipulation. Respondents agree, acknowledge and understand that by electronically sending to the Department a facsimile copy of Respondents' actual signature as it appears on the Stipulation, that receipt of the facsimile copy by the Department shall be as binding on Respondents as if the Department had received the original signed Stipulation.


DATED:

8/3/10


DIVINA REALTY INC.
BY: FABY LLERANDI

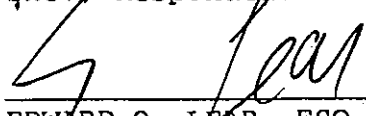
DATED:

8/3/10


FABY LLERANDI, individually and as designated officer of Divina Realty Inc. Respondent

DATED:

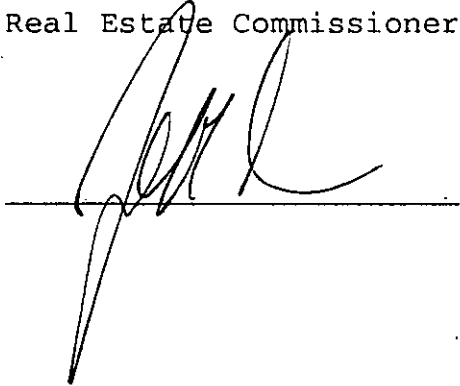
8/4/10


EDWARD O. LEAR, ESQ.
Attorney for Respondents
Approved as to form

* * *

1 The foregoing Stipulation and Agreement is hereby
2
3 adopted as my Decision as to Respondents DIVINA REALTY INC. and
4 FABY LLERANDI, individually and as designated officer of Divina
5 Realty Inc., and shall become effective at 12 o'clock noon on
6 October 7, 2010.

7 IT IS SO ORDERED 8/31, 2010.

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9 JEFF DAVI
10 Real Estate Commissioner
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5X6
1 LISSETE GARCIA, SBN 211522
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6914 (direct)
6 -or- (213) 576-6982 (office)

FILED
FEB 11 2010
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-36460 LA
12)
13 DIVINA REALTY INC., doing business as) A C C U S A T I O N
14 Divina Realty and Arena Mortgage; and)
15 FABY LLERANDI, individually and as)
16 designated officer of)
17 Divina Realty Inc.)
18 Respondents.)

19 The Complainant, Joseph Aiu, a Deputy Real Estate
20 Commissioner of the State of California, for cause of Accusation
21 against DIVINA REALTY INC., dba Divina Realty and Arena
22 Mortgage; and FABY LLERANDI, individually and as designated
23 officer of Divina Realty Inc., alleges as follows:

24 1.

25 The Complainant, Joseph Aiu, acting in his official
26 capacity as a Deputy Real Estate Commissioner of the State of
27 California, makes this Accusation against DIVINA REALTY INC.
(DIVINA) and FABY LLERANDI (LLERANDI).

1 2.

2 All references to the "Code" are to the California
3 Business and Professions Code and all references to
4 "Regulations" are to Title 10, Chapter 6, California Code of
5 Regulations.

6 Licenses

7 3.

8 A. At all times mentioned, DIVINA was licensed or had
9 license rights issued by the Department of Real Estate
10 (Department) as a corporate real estate broker. DIVINA was
11 originally licensed as a corporate real estate broker on
12 March 24, 2005.

13 B. From March 24, 2005 to March 23, 2009, Robert
14 Escalera Perez (Perez) was the designated officer of DIVINA.
15 DIVINA was licensed by the Department as a corporate real estate
16 broker, acting by and through Perez, as the designated officer
17 and broker responsible for supervising the activities requiring
18 a real estate license conducted on behalf of DIVINA by DIVINA's
19 officers, agents and employees, as necessary to secure full
20 compliance with the Real Estate Law as set forth in Code Section
21 10159.2.

22 C. Perez was first licensed individually as a real
23 estate broker by the Department on April 17, 1990. On
24 October 7, 2009, the Department revoked Perez' real estate
25 broker license in Case No. H-35531 LA.

26 D. From March 24, 2009 to the present, LLERANDI has
27 been the designated officer of DIVINA. DIVINA was and is

1 licensed by the Department as a corporate real estate broker,
2 acting by and through LLERANDI, as the designated officer and
3 broker responsible for supervising the activities requiring a
4 real estate license conducted on behalf of DIVINA by DIVINA's
5 officers, agents and employees, as necessary to secure full
6 compliance with the Real Estate Law as set forth in Code Section
7 10159.2.

8 E. LLERANDI was first licensed individually as a real
9 estate broker by the Department on June 29, 2005.

10 Brokerage

11 4.

12 At all times mentioned, in the City of Corona, County
13 of Riverside, DIVINA and LLERANDI engaged in the business of
14 real estate brokers conducting licensed activities within the
15 meaning of Code Sections 10131(a), 10131(d), and 10131.2.

16 DIVINA and LLERANDI engaged in operating a residential resale,
17 mortgage loan, advance fee and loan modification service
18 brokerage. For compensation or in expectation of compensation
19 and for fees often collected in advance, Respondents contacted
20 lenders on behalf of distressed homeowners seeking modification
21 or forbearance of the terms of their home loans.

22 Audit

23 5.

24 On June 11, 2009, the Department completed an audit
25 examination of the books and records of DIVINA pertaining to the
26 mortgage loan, advance fee and loan modification service
27 activities described in Paragraph 4, which require a real estate

1 license. The audit examination covered a period of time
2 beginning on January 1, 2007 to May 31, 2009. The audit
3 examination revealed violations of the Code and the Regulations
4 as set forth in the following paragraphs, and more fully
5 discussed in Audit Report SD 080046 and the exhibits and work
6 papers attached to said Audit Report.

7 6.

8 Violations

9 In the course of activities described in Paragraph 4,
10 above, and during the examination period described in Paragraph
11 5, Respondents DIVINA and LLERANDI, acted in violation of the
12 Code and the Regulations as follows:

13 (A) Failed to establish and/or maintain a trust
14 account at a bank or other recognized financial institution in
15 the name of the broker for deposit of advance fees collected by
16 DIVINA, thereby depositing trust funds in DIVINA's general
17 account and thus commingling trust funds with DIVINA's funds, in
18 violation of Code Sections 10145, 10146, 10176(e) and
19 Regulations 2832 and 2835.

20 (B) Failed to maintain a control record in the form
21 of a columnar record in chronological order of all trust funds
22 including advance fees received, deposited and disbursed, in
23 violation of Code Section 10145 and Regulation 2831.

24 (C) Failed to maintain a separate record for each
25 beneficiary or transaction, thereby failing to account for all
26 advance fees collected, in violation of Code Section 10145 and
27 Regulation 2831.1.

1 (D) From January 1, 2007 to June 18, 2009,
2 Respondents collected advance fees within the meaning of Code
3 Section 10026 from homeowners seeking loan modification services
4 wherein DIVINA failed to provide homeowner-borrowers, a pre-
5 approved advance fee agreement from the Department in the form
6 of a no objection letter, in violation of Code Section 10085 and
7 Regulation 2970.

8 (E) Failed to establish and maintain a trust account
9 at a bank or other recognized financial institution in the name
10 of the broker for deposit of advance fees collected by DIVINA.
11 Advance fees that were collected from borrowers in connection
12 with loan modification transactions were deposited into DIVINA's
13 general business account in violation of Code Sections 10145,
14 10146, 10176(e) and Regulations 2832 and 2835.

15 (F) With reference to the lack of an advance fee
16 agreement, DIVINA failed to provide a complete description of
17 services to be rendered provided to each prospective tenant in
18 10 point type font and failed to provide an allocation and
19 disbursement of the amount collected as the advance fee, in
20 violation of Code Section 10146 and Regulation 2972.

21 (G) Failed to provide and/or maintain an approved
22 Mortgage Loan Disclosure Statement containing all the
23 information required by Code Section 10241(c) before borrowers
24 Ivy L. Alcarez and Eduardo Abad became obligated to perform
25 under the terms of their respective loans, in violation of Code
26 Section 10240 and Regulation 2840.

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The overall conduct of Respondent LLERANDI constitutes a failure on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of DIVINA, as required by Code Section 10159.2, and to keep DIVINA in compliance with the Real Estate Law, with specific regard to loan modifications services and advance fee handling, requiring a real estate license and is cause for the suspension or revocation of the real estate license and license rights of DIVINA and LLERANDI pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

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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 the license and license rights of Respondents
5 DIVINA REALTY INC., dba Divina Realty and Arena Mortgage; and
6 Faby Llerandi, individually and as designated officer of Divina
7 Realty Inc., under the Real Estate Law (Part 1 of Division 4 of
8 the Business and Professions Code) and for such other and
9 further relief as may be proper under other applicable
10 provisions of law.

11 Dated at San Diego, California

12 this 15 day of February, 2010.

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14 
15 JOSEPH AIU
16 Deputy Real Estate Commissioner
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23 cc: Divina Realty Inc.
24 Faby Llerandi
25 Joseph Aiu
26 Sacto
27 Audits - Lisa Kwong