



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARLON ORTEGA,  
and  
ARMANDO MEMBRENO,

Respondents.

Case No. H-37359-LA

OAH No. 2011120953

PROPOSED DECISION

This matter was heard by Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 17, 2012, in Los Angeles, California.

Maria Suarez (Complainant) was represented by Lissete Garcia, Counsel, California Department of Real Estate (DRE). Marlon Ortega (Respondent Ortega or Ortega) represented himself. Respondent Armando Membreno (Respondent Membreno or Membreno) was not present or represented at the hearing.

Oral and documentary evidence was received, the record closed and the matter was submitted for decision on July 17, 2012.

FACTUAL FINDINGS

1. Complainant filed Accusation Number H-37359-LA against the respondents in her official capacity as a Deputy Real Estate Commissioner for the State of California.

2. Real Estate Salesperson license number 01737070 was issued to Respondent Ortega on March 25, 2006. The license is current and is due to expire on March 24, 2014. Ortega was the owner of Metro Golden Financial Funding Group Inc. (Metro), license number 01523460, which was located at 688 N. Arrowhead Avenue, Suite 101-B, San Bernardino, California. Ortega's real estate salesperson license was listed as under the employment of Metro from September 5, 2006, to August 11, 2008.

3. Real Estate Salesperson license number 01786106 was issued to Respondent Membreno on January 27, 2007. The license expired on January 26, 2011. Membreno's real estate salesperson license was listed as under the employment of Metro from January 27, 2007 to August 11, 2008.

4. Joel Rodriguez (Rodriguez) and Respondents Membreno and Ortega were the incorporators and corporate officers of Casa Mar Financial (Casa Mar) which was located in the same office as Metro. Casa Mar was a corporation established by Ortega, Membreno and Rodriguez on April 28, 2008, for the stated purpose of providing financial services and investments. Ortega testified that Casa Mar was formed to act as a third party in the negotiation of short sale transactions. Rodriguez was the Chief Executive Officer, Membreno was the secretary, chief financial officer, a director and the agent for service of process and Ortega was the secretary and a director.

5. Armando Santana Ramos (Ramos) was referred by a neighbor to Respondent Membreno for assistance with a loan modification. On June 7, 2008, Ramos met with Membreno, to obtain Membreno's assistance with a loan modification for the mortgage on his residence located at 12411 Osborne Street, Unit 10, Pacoima, California (Ramos Property). Membreno advised Ramos that he worked for Casa Mar and that Ortega was his boss. During the June 7, 2008 meeting, Ramos provided Membreno with his bank statements, two years of income tax returns and mortgage statements. Ramos gave Membreno a check for \$1,200 as partial payment of a \$1,995 processing fee that Membreno demanded.

6. On June 27, 2008, Ramos received a letter from Melissa Wiltout, a loan processor with Casa Mar, acknowledging that Ramos was a new client of Casa Mar and that the firm would be handling the loan modification negotiation for the Ramos Property (Ramos loan modification).

7. Ramos waited for Membreno to work out a loan modification on his mortgage for over a year. Finally, on June 19, 2009, Membreno informed Ramos that he was unable to arrange a loan modification for the Ramos property. Membreno arranged for Ramos to join a program he called "Oracle Vision" which Membreno described to Ramos as an organization of lawyers that arranged loan modifications and would require payment of \$1,200 per month. At that time, Membreno took Ramos to a notary and had Ramos sign a document that referenced a Trustee Foreclosure. Ramos made two payments to the "Oracle Vision" program before he was advised by Membreno that the "Oracle Vision" program was unable to negotiate the Ramos loan modification.

8. Membreno next referred Ramos to the "Sunset Beach Trust" operated by Sally Samaris (Samaris) and Rene Solis (Solis) under the name of SB Management. Membreno explained that the "Sunset Beach Trust" would take over handling the negotiations and would attempt to buy the Ramos property from the

lender. At Membreno's instruction, Ramos made 11 payments of \$930 to "Sunset Beach Trust." Ramos and his wife delivered each of the \$930 payments to Samaris and Solis at their office located at 21133 Victory Blvd., Suite 209, Canoga Park, California.

9. In an interview with DRE investigator Edgar Sarmiento, Membreno admitted that he had made the referrals to the Oracle Vision and Sunset Beach Trust. He also admitted that he expected a referral fee from each, but claimed that he never received any referral fees.

10. Respondent Membreno asked Ortega to place a short sale listing for the Ramos property, dated August 28, 2008, in the Multiple Listing Service (MLS). Membreno had not paid his MLS fees at that time and was therefore ineligible to list property in the MLS. Respondent Ortega placed the listing in the MLS under his own name on September 11, 2008. Ortega received a few inquiries about the listing and referred the inquiries to Membreno.

11. At hearing, Ramos credibly testified that he did not sign the sales agreement and never intended to sell the Ramos property, never spoke with Ortega, never met with Ortega and never engaged Ortega to handle any transaction related to the Ramos Property.

12. In January of 2009, Ortega learned that Membreno was accepting advance fees for negotiations of loan modifications under the auspices of Casa Mar. Ortega resigned from Casa Mar effective March 31, 2009, and moved out of the office that Metro<sup>1</sup> and Casa Mar shared. A new Statement of Information was filed with the Secretary of State showing Joel Rodriguez as replacing Ortega as secretary and director of Casa Mar on September 3, 2009.

13. The lender foreclosed on the Ramos property and the sheriff evicted the Ramos family on May 21, 2010. Membreno refused to return the \$1,200 advance fee that he was paid by Ramos. He assured Ramos that the foreclosure and eviction were a mistake and that the Ramos loan modification was still in negotiation.

14. Yesina Ruvalcaba (Ruvalcaba) was the real estate broker of record for Metro. She was not aware of the existence of Casa Mar and was not aware that Membreno had solicited loan modifications or had accepted advance fees. Ruvalcaba had not authorized any of the Metro salespersons to accept advance fees for any type of transactions or to negotiate loan modifications.

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1 Ortega closed Metro in March of 2009, because of financial difficulties and the decline in the real estate and mortgage markets.

*Mitigation/Rehabilitation*

15. With respect to Respondent Membreno, there is no evidence of mitigation or rehabilitation.

16. With respect to Respondent Ortega, there is evidence that Ortega was not aware of the Ramos loan modification. Ortega provided letters of reference from clients Donald Brock, Elizabeth Stout and Esther Rangle, and real estate brokers Badar Mansoor of Realty Executives and Eric Brown of New Millennium Realtors. Each attested to Ortega's good character and professionalism.

LEGAL CONCLUSIONS

1. Business and Professions Code section<sup>2</sup>10026 provides that the term "advance fee" means a fee, regardless of the form, that is claimed, demanded, charged, received or collected by a licensee for services requiring a license before fully completing the service the licensee contracted to perform or represented would be performed.

2. Code section 10130 provides that it is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker without a license.

3. Code section 10131, subdivision (d), provides that a real estate broker is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, solicits borrowers or lenders for or negotiates or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunities.

4. Code section 10131.1 provides that a real estate broker is a person who engages as a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property, or who makes agreements with the public for the collection of payments or for the performance of services in connection with real property sales contracts or promissory notes secured directly or collaterally by liens on real property.

5. Code section 10131.2 provides that a real estate broker is a person who engages in the business of claiming, demanding, charging, receiving, collecting or

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<sup>2</sup> All further references to Business and Professions Code shall be to Code.

contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.

6. Code section 10132 provides that a real estate salesperson is a natural person who, for compensation or in expectation of compensation is employed by a licensed real estate broker to one or more of the acts set forth in sections 10131, 10131.1, 10131.2, 10131.3, 10131.4 and 10131.6.

7. Code section 10139 provides that it is a crime for any person to act as a real estate broker, real estate salesperson, or mortgage loan originator without a license or license endorsement, or to advertise using words indicating that he or she is a real estate broker, real estate salesperson, or mortgage loan originator without being so licensed or without having obtained a license endorsement.

8. Code section 10177, subdivision (d), provides that willful disregard or violation of the real estate law or the rules and regulations of the Commissioner is cause for discipline.

9. Code section 10177, subdivision (g), provides that demonstrated negligence or incompetence in performing an act which requires a real estate license is cause for discipline.

10. Code section 10177, subdivision (j), provides that fraud and/or dishonest dealings by a real estate licensee is cause for discipline.

#### *Respondent Membreno*

11. Respondent Membreno violated Code section 10130 in conjunction with Code sections 10131.1 and 10131.2, because he accepted a \$1,200 advance fee payment for the Ramos loan modification outside the scope of his association with Metro and did not hold a real estate broker license entitling him to handle real estate transactions independently. (Factual Findings 3-14.)

12. Respondent Membreno violated Code sections 10132 and 10139 when he accepted a \$1,200 advance fee payment for the Ramos loan modification outside the scope of his association with Metro, his employing broker. (Factual Findings 3-14.)

13. Respondent Membreno's real estate salesperson license is subject to discipline pursuant to Code section 10177, subdivision (d), because Membreno

willfully violated provisions of the real estate law. (Factual Findings 3-14; Legal Conclusions 1-13.)

14. Cause exists to discipline Respondent Membreno's real estate license pursuant to Code section 10177, subdivision (g), because Respondent was negligent and incompetent in handling the Ramos loan modification when he failed to perform the loan modification and negotiation services that he had promised Ramos. (Factual Findings 3-14; Legal Conclusion 9.)

15. Cause exists to discipline Respondent Membreno's real estate license pursuant to Code section 10177, subdivision (j), because Respondent was dishonest in his handling of the Ramos loan modification. (Factual Findings 3-14; Legal Conclusion 10.)

*Respondent Ortega*

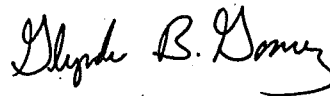
16. Cause does not exist to discipline Respondent Ortega's real estate salesperson license pursuant to Code sections 10130, 10131.1, 10131.2, 10132, 10139, or 10177, subdivisions (d), (g) or (j), because Complainant did not establish by clear and convincing evidence that Ortega either had knowledge, participated in or was involved in the Ramos loan modification. (Factual Findings 1-17; Legal Conclusions 1-16.)

ORDER

1. All licenses and licensing rights of Respondent Armando Membreno under the Real Estate Law are revoked.

2. The Accusation is dismissed as to Respondent Marlon Ortega.

September 20, 2012



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GLYNDA B. GOMEZ  
Administrative Law Judge  
Office of Administrative Hearings