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APR 17 2013

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: C

In the Matter of the Accusation of)	DRE No. H-37728 LA
)	
JUAN DEMECIO JIMENEZ,)	OAH No. 2012070708
<u>ARMANDO MEMBRENO,</u>)	
GUSTAVO VARGAS,)	
SALLY SAMARIS,)	
NINO VERA,)	
CARLOS TORRES ALMAGUER, and)	
HECTOR MANUEL PENA,)	
)	
Respondents.)	
_____)	

DECISION

The Proposed Decision dated February 27, 2013, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

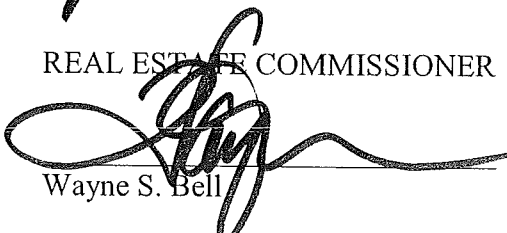
Pursuant to Section 11517(c)(2) of the Government Code, the following correction is made to the Proposed Decision:

Page 1, footnote, No. 1, shall be corrected to read "Prior to the date of this hearing, the real estate licenses of Respondents Juan Demecio Jimenez, Hector Manuel Pena, and Nino Vera were revoked by the Commissioner's Decision effective on August 6, 2012. Respondent Carlos Torres Almaguer voluntarily surrendered his real estate license by an Order effective April 17, 2012. As to Respondents Gustavo Vargas and Sally Samaris, who did not appear, the matter was remanded for agency default."

This Decision shall become effective at 12 o'clock noon on
April 10, 2013.

IT IS SO ORDERED April 10, 2013.

REAL ESTATE COMMISSIONER


Wayne S. Bell

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JUAN DEMECIO JIMENEZ; ARMANDO
MEMBRENO; GUSTAVO VARGAS;
SALLY SAMARIS; NINO VERA; CARLOS
TORRES ALMAGUER; and HECTOR
MANUEL PENA,

Respondents.

Case No. H-37728 LA

OAH No. 2012070708

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on February 27, 2013, in Los Angeles, California.

Lisette Garcia, Counsel for the Department of Real Estate (Department), appeared on behalf of complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California.

Respondent Armando Membreno (respondent) appeared on his own behalf.¹

Oral and documentary evidence was received, the record was closed, and the matter was submitted on February 27, 2013.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant filed the Accusation in her official capacity. Respondent timely filed a notice of defense.

¹ Prior to the date of this hearing, all other respondents except Gustavo Vargas and Sally Samaris were dismissed from this action. As to Vargas and Samaris, who did not appear, the matter was remanded for agency default.

2. The Department originally issued real estate salesperson license no. 01786106 to respondent on January 27, 2007. The Department revoked all of respondent's licenses and licensing rights under the Real Estate Law in a Decision dated October 8, 2012, effective November 19, 2012, in Case Number H-37359 LA (OAH No. 2011120953).

3. Respondent received notice of the decision revoking his licensing rights. As of the date of this hearing, 100 days after the effective date of his license revocation, respondent has not petitioned for reconsideration of the decision, petitioned for a writ of mandate, moved to vacate the decision, or taken any other action to challenge or appeal the revocation of his license.

LEGAL CONCLUSIONS

1. The Department's decision revoking respondent's licensing rights is final, as the time for any challenge to the decision has elapsed. To challenge a Department decision, a licensee must petition for reconsideration or file a petition for a writ of mandate within 30 days of the effective date of the decision. (Gov. Code, §§ 11521, 11523.) Where the Department issues a decision against a licensee after a default by the licensee, the licensee may move to vacate the decision within seven days after service on the respondent of the decision. (Gov. Code, § 11520, subd. (c).) Respondent did not timely challenge the decision. (Factual Findings 2, 3.)

2. The Department lacks jurisdiction to discipline the license it originally issued to respondent and then revoked. Business and Professions Code section 10103, which confers continuing jurisdiction on the Department, applies only to the lapsing or suspension of or the voluntary surrender of a license, none of which occurred here.

3. The purpose of filing an Accusation is to initiate a hearing to determine whether a license should be revoked, suspended, limited, or conditioned. (Gov. Code, § 11503.) Respondent having no licensing rights that the Department may discipline, there is no substantive issue for the Administrative Law Judge to determine. (Factual Findings 2, 3.)

ORDER

The Accusation is dismissed as to respondent Armando Membreno.

DATED: February 27, 2013



HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings