

FILED

MAR 29 2013

DEPARTMENT OF REAL ESTATE

BY: Cm

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

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

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on March 5, 2013, and the findings of fact set forth herein are based on one or more of the following: (1) Respondents' express admissions, (2) affidavits, and (3) other evidence.

FINDINGS OF FACT

1.

On December 12, 2011, Maria Suarez made an Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. On December 14, 2011, the Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to the last

known mailing addresses on file with the Department of Real Estate ("Department") for Respondents GUSTAVO VARGAS ("VARGAS") and SALLY SAMARIS ("SAMARIS"). Respondents VARGAS and SAMARIS filed Notices of Defense to the Accusation. A First Amended Accusation and a Second Amended Accusation were subsequently filed in this matter and served to Respondents VARGAS and SAMARIS, and to Respondent SAMARIS' attorney, at the addresses on the Respondents' Notices of Defense.

On August 23, 2012, a Notice of Hearing was mailed to the addresses listed on the Notices of Defense for Respondents VARGAS and SAMARIS, and to Respondent SAMARIS' attorney, William Livingston, Esq. The hearing was scheduled to commence on February 27, 2013, through March 1, 2013.

Respondents VARGAS and SAMARIS, and Respondent SAMARIS' attorney failed to appear at the hearing on February 27, 2013.

2.

From February 18, 1988, through the present, Respondent GUSTAVO VARGAS ("VARGAS") has been licensed by the Department as a real estate salesperson, Department ID 00983190. From June 29, 2007, through November 6, 2008, Respondent VARGAS was licensed under broker Andes Financial Investments, Inc. From November 7, 2008, through May 5, 2009, Respondent VARGAS was licensed under broker VIP on 99 Enterprises, Inc. From May 19, 2009, through September 27, 2009, Respondent VARGAS was licensed under broker Sol Funding, Inc. From September 28, 2009, through October 10, 2010, Respondent VARGAS was licensed under broker VIP on 99 Enterprises, Inc.

3.

From January 10, 2004, through January 9, 2012, Respondent SALLY SAMARIS ("SAMARIS") was licensed by the Department as a real estate salesperson, Department ID 01412664. From April 19, 2005, through October 12, 2009, Respondent SAMARIS was licensed under broker New Horizon R E, Inc. Respondent SAMARIS' real estate salesperson license expired on January 9, 2012. Respondent SAMARIS has renewal rights under Business and Professions

Code ("Code") Section 10201. The Department retains jurisdiction pursuant to Code Section 10103.

4.

At no time mentioned herein have David Zepeda, Sunset Beach Trust, SB Management, Oracle Vision, Financial Wellness for Homeowners of Los Angeles, FWHLA, FWHLA.org., Home Protection Group, Jesus Emanuel Juan Lim aka Jesus Lim and Jess Lim, Rene Wilfredo Solis aka Rene Solis, Tony Haschke, Cesar Leon aka Cesar De Leon, Twin Builders Foundation Corporation, Solis Realty, Inc., Service Solution, Inc., Raymundo Rojas, Jose Alberto Bances Gonzalez, Jose Luis Aguilar, Juan A. Lazaro, Marcelo Ramos, Franklin D. Marquez, Emily S. Vasquez, Alex Canjurra, Lucy Delgado, Flavio Humberto Lopez, Northern Blue Masters, Inc., Global Credit Masters, Inc., Principal Home Services, Inc., The Second Chance Consulting, Inc., Octavio Ponce, Juana Chavez Bolanos and Avantgarde Horizon, Inc., ever been licensed by the Department in any capacity.

5.

At all times herein mentioned, in the State of California, Respondents VARGAS and SAMARIS, while using their own names or other fictitious business names, engaged in the business of a real estate broker conducting activities requiring a real estate license within the meaning of Code Sections 10131(a) (solicit prospective sellers or purchasers of, or negotiate the purchase, sale or exchange of real property), 10131(b) (rent or solicit for prospective tenants, negotiate the sale, purchase or exchanges of leases on real property, or collect rent from real property), 10131(d) (solicit borrowers for or negotiate loans or perform services for borrowers in connection with loans secured by liens on real property), 10131(e) (sell, buy, exchange or offer to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property, and performs services for the holders thereof), and 10131.1(a) (make 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).

6.

For an unknown period of time beginning no later than December, 2008, and continuing through November, 2010, for compensation or in expectation of compensation and for fees often collected in advance, Respondents VARGAS and SAMARIS solicited borrowers by offering to conduct loan negotiations and modifications, foreclosure forbearance, mitigation, or foreclosure consultant services in connection with loans secured by liens on real property, within the meaning of Code Sections 10131 and 10131.1(a).

7.

For compensation or in expectation of compensation and for fees often collected in advance, Respondents VARGAS and SAMARIS engaged in a plan and scheme wherein Respondents VARGAS and SAMARIS solicited and induced homeowners into signing Powers of Attorney and Quitclaim Deeds to their real properties for David Zepeda, Sunset Beach Trust, SB Management, Oracle Vision, Financial Wellness for Homeowners of Los Angeles, Twin Builders Foundation Corporation, or other unknown individuals, entities, or trusts. Respondents VARGAS and SAMARIS further induced homeowners to stop paying their mortgages and instead pay rents or "caretaker" fees for the real properties directly to Respondents on a monthly basis.

8.

Respondents VARGAS and SAMARIS made misrepresentations to homeowners including, but not limited to, that the foreclosure on the homeowners' properties would be stopped, that homeowners would obtain more favorable terms, lowered principal or lower payments on their mortgages, that the homeowners' monies would be pooled in order to purchase the notes from the homeowners' lenders and sell the real properties back to the homeowners at a lower cost. Respondents VARGAS and SAMARIS offered to pay commissions for referring other homeowners to join the "caretaker" plan. Respondents VARGAS and SAMARIS failed to complete the services promised to the homeowners. Several homeowners subsequently lost their properties in foreclosure and were evicted from their homes after joining Respondents' "caretaker" plan.

9.

Approximately 550 homeowners were victimized as a result of Respondents VARGAS and SAMARIS' plan and scheme described in Paragraphs 7 and 8, above. Said homeowners include, but are not limited to, the following:

	DATE OF TRANSACTION	HOMEOWNER	AGENT(S) INVOLVED	AMOUNT PAID
1	Feb. 2009	Milagro and Luis P.	SAMARIS	\$5,100
2	Sept. 2009	Armando S.	SAMARIS	\$9,477.20
3	Nov. 2009	Lourdes B.	VARGAS	\$12,596.72
4	Dec. 2009	Raul Z. and Maria C.	VARGAS	\$9,942.48
5	April 2010	Carol R.	SAMARIS & VARGAS	\$10,000

DETERMINATION OF ISSUES

1.

The conduct, acts and/or omissions of Respondents VARGAS and SAMARIS, as set forth in Paragraphs 7 through 9, above, in collecting advance fees from prospective buyers or borrowers pursuant to a written fee agreement, which agreement was not submitted to the Department for review prior to use, was in violation of Code Sections 10085 and 10085.5 and Regulation 2970, and constitutes grounds for the suspension or revocation of the licenses and license rights of Respondents VARGAS and SAMARIS pursuant to Code Section 10177(d).

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2.

For those transactions described in Paragraph 9, above, that occurred after October 11, 2009, Respondents VARGAS and SAMARIS charged and collected advance fees as compensation for offering to perform loan modification or other form of loan forbearance for said borrowers, in violation of Code Sections 10085.5 and 10085.6, and constitutes grounds for the suspension or revocation of the licenses and license rights of Respondents VARGAS and SAMARIS pursuant to Code Section 10177(d).

3.

The conduct, acts and/or omissions of Respondents VARGAS and SAMARIS, as set forth in Paragraphs 7 through 9, above, in making false and/or misleading representations in order to induce borrowers to enter into a loan modification, negotiation or forbearance agreement and in otherwise engaging in fraudulent and dishonest dealing, constitutes cause for the suspension or revocation of the licenses and license rights of Respondents VARGAS and SAMARIS pursuant to Code Section 10177(j).

4.

The activities described in Paragraphs 5 through 9, above, require a real estate broker license or salesperson license employed and compensated by a real estate broker under Code Sections 10131 and 10132. Respondents VARGAS and SAMARIS, engaged in the activities described in Paragraphs 7 through 9, above, while using fictitious business names that were not licensed by the Department in any capacity. Respondents VARGAS and SAMARIS violated Code Sections 10130 and 10137 by engaging in activities requiring a real estate broker license without first obtaining a broker license from the Department or conducting said activities under the employment or supervision of their licensed broker.

5.

The standard of proof applied was clear and convincing to a reasonable certainty.

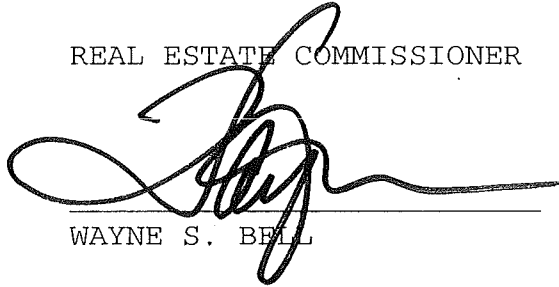
ORDER

The licenses and license rights of Respondents
GUSTAVO VARGAS and SALLY SAMARIS under the provisions of
Part I of Division 4 of the Business and Professions Code
are revoked.

This Decision shall become effective at
12 o'clock noon on April 18, 2013.

DATED: March 25, 2013.

REAL ESTATE COMMISSIONER

A large, stylized handwritten signature in black ink, appearing to read 'Wayne S. Bell', is written over a horizontal line.

WAYNE S. BELL

1 Department of Real Estate
2 320 West Fourth Street, Suite 350
3 Los Angeles, California 90013-1105

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11 In the Matter of the Accusation of) DRE NO. H-37728 LA
12 JUAN DEMECIO JIMENEZ,)
13 ARMANDO MEMBRENO,) OAH NO. 2012070708
14 GUSTAVO VARGAS,) DEFAULT ORDER
15 SALLY SAMARIS,)
16 NINO VERA,)
17 CARLOS TORRES ALMAGUER,)
and HECTOR MANUEL PENA,)
Respondents.)

18 Respondents, GUSTAVO VARGAS and SALLY SAMARIS, having
19 failed to appear at a hearing duly noticed before the Office of
20 Administrative Hearings for February 27, 2013, is now in default.
21 It is, therefore, ordered that a default be entered on the
22 record in this matter as to GUSTAVO VARGAS and SALLY SAMARIS.

23 IT IS SO ORDERED

March 5, 2013

24 Real Estate Commissioner

25 Dolores Weeks

26 By: DOLORES WEEKS
27 Regional Manager