

FILED

BEFORE THE BUREAU OF REAL ESTATE

MAR 10 2014

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By *J. Almon*

In the Matter of the Accusation of)	CalBRE No.	H-38214 LA
)		
HECTOR A VASQUEZ,)	OAH No.	2013070832
)		
)		
Respondent.)		
_____)		

DECISION

The Proposed Decision dated January 28, 2014, 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.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on APR 01 2014.

IT IS SO ORDERED 3/5/2014
REAL ESTATE COMMISSIONER

Wayne Bell
WAYNE BELL

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OPCIONES MORTGAGE, REMAX
EMPIRE, INC.; and RUBEN A. DIAZ
Individually and as designated officer of
OPCIONES MORTGAGE and REMAX
EMPIRE, INC.; and HECTOR A.
VASQUEZ,

Respondents.

DRE No. H-38214 LA

OAH No. 2013070832

PROPOSED DECISION

This matter was heard on January 7, 2014, in Los Angeles, California, by Gloria A. Barrios, Administrative Law Judge, Office of Administrative Hearings, State of California. Maria Suarez (Complainant), Deputy Real Estate Commissioner, was represented by James R. Peel, Counsel for the Bureau of Real Estate (Bureau). Respondent Hector A. Vasquez was present and represented himself. There were no appearances by or on behalf of any other party.

Oral and documentary evidence was received, and the matter was submitted for decision on January 7, 2014.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent Hector A. Vasquez has been licensed as a real estate salesperson since January 11, 2003. The license has been renewed through May 4, 2015. There was no evidence of any prior discipline imposed against the license.
3. On September 4, 2012, Respondents' Opciones Mortgage, Remax Empire, Inc., and Ruben A. Diaz, individually and as designated officer of Opciones Mortgage and Remax Empire, Inc., real estate licenses were revoked in the Matter of the Accusation Against Opciones Mortgage, Remax Empire, Inc., and Ruben A. Diaz, individually and as designated officer of Opciones Mortgage and Remax Empire, Inc., and Hector A. Vasquez,

in Case No. H-382142, before the Department of Real Estate, State of California.¹ Respondents except Respondent Hector A. Vasquez (Respondent), failed to file a Notice of Defense in accordance with Government Code section 11506. Therefore, the Bureau issued a Default Decision as to Respondents Opciones Mortgage, Remax Empire, Inc., and Ruben A. Diaz, individually and as designated officer of Opciones Mortgage and Remax Empire, Inc., pursuant to Government Code section 11520. Consequently, the Factual Findings and Legal Conclusions in this Proposed Decision will determine the license and licensing rights of Respondent Hector A. Vasquez as to the Accusation's Third Cause of Action only.²

4. On January 21, 2010, Respondent Hector A. Vasquez of Remax Empire, Inc., (Respondent's employing broker) and Fabio Alvarado of Real Options Loan Modification Center dba Opciones Reales met with Ignacio and Olga Robledo regarding their residence located at 3733 and 37331/2 Monterey Road, in Los Angeles. They were at least one or two months behind in their mortgage payments and desperate not to lose their home. Their property is a duplex. Respondent and Alvarado work for two different companies in separate offices in the same building located at 2444 West Beverly Blvd., Montebello. The Robledos, Respondent and Alvarado communicated in Spanish. Respondent told them he would charge them \$2,095 for preparation of a loan modification application. He demanded they pay \$1,000 up front in cash. The Robledos paid Respondent and Alvarado \$1,000 in cash. Olga Robledo (Robledo)³ understood from Respondent and Alvarado that a loan modification would allow the family to keep their home. Respondent said it was very simple. He would talk to the bank. The lender was Citibank (Citimortgage, Bank.) The Robledos gave Respondent all their mortgage related paperwork. Their monthly mortgage payment was \$1,460.34. They had lived at their residence for fifteen years.

5. On January 21, 2010, the Robledos received a receipt from Real Options Loan Modification Center dba Opciones Reales, a division of Remax Empire, signed by Alvarado, for the \$1,000 for the preparation and negotiation of a loan modification application. The Robledos also received a copy of a Borrowers Authorization (release). The release signed by Ignacio Robledo authorized Respondent and Alvarado, representatives for Remax Empire dba Real Options Loan Modification Center, to obtain the Robledos' mortgage information from Citimortgage. (See Complainant's Exhibit 3, pp. 2-4)

6. A loan modification is a process where the terms of the mortgage are modified outside the original terms of the contract agreed to by the lender and borrower to benefit the borrower. The loan may be modified by reducing the interest rate, reducing the principal, reducing late fees, reducing the length of the loan term, capping the monthly mortgage

¹ After the Accusation was filed, the Department of Real Estate became the Bureau of Real Estate.

² Respondent Hector A. Vasquez is named only in the Third Cause for Discipline. The Bureau found the allegations against Respondents Remax Empire, Inc., and Ruben A. Diaz to be true and uncontradicted as to the Accusation's Third Cause of Action.

³ Only Olga Robledo testified at the hearing.

payment and/or participating in a mortgage forbearance program. A licensed real estate salesperson may perform loan modification work only under the supervision of an employing broker.

7. Robledo testified that from January 2010 until October 2010 the Robledos worked with Respondent on the loan modification application. On March 3, 2010, Robledo gave Respondent an additional \$1,000, by way of a money-gram, to be paid to the lender. The money gram given to Respondent was made out to Citimortgage. Robledo claimed the lender never received the money.

8. Robledo said she called Respondent two or three times a day about the application for a loan modification from March through May 2010. Respondent told Robledo not to worry. He instructed her not to pay the property taxes or homeowner's insurance. At one point she told him that someone had come to her home and took photographs. Robledo asked Respondent what was going on. He told her it was just advertising and nothing was going on. Respondent told Robledo the photos were probably taken on behalf of investors who purchase properties. He instructed her to send any paperwork she received about her home mortgage to him. Robledo also called the lender numerous times. She spoke to several different people at the bank about her home mortgage but was unable to obtain satisfactory answers to her questions. The bank told her that it could only speak to Respondent and Alvarado about her home mortgage, not her.

9. On August 20, 2010, Robledo paid Respondent \$1,460.34 (two money-grams). According to Robledo, Respondent told her to leave the "pay to the order of" line blank on the two money-grams. He told her he would make them out to Citibank. Robledo left the lines blank. The bank never received the money.

10. On September 15, 2010, Beatrice and Mirabella, daughters of the Robledos went to Respondent's office. They gave him two money orders totaling \$1,460.34 which he was to give to the lender. Respondent told Robledo not to put any names on the payee lines on both orders. He explained that Citibank had merged with Chase Bank. Citibank and Chase Bank had not merged. They are and remain two separate banks. Respondent filled "Chase Bank" on the payee lines on the two money orders. The money orders were returned to the Robledos. Robledo call Citibank to see why the money orders were returned to her. The bank repeated that they could only speak to Respondent and Alvarado about her mortgage, not her. The bank told Robledo to have Respondent or Alvarado contact them. Robledo resent the money orders to the lender. Citibank eventually cashed the money orders.

11. By September 2010 the Robledos were one year behind in their mortgage payments. In September 2010 Alvarado called the Robledos. He told them to file for bankruptcy. He wanted \$750 to file bankruptcy papers on their behalf. The Robledos did not file for bankruptcy. Robledo contacted Citibank again. The bank informed her that her property was "no longer in their system." They told her not to give Respondent and Alvarado any more money.

12. In October 2010 the Robledos went to see Respondent and Alvarado. They asked them what was going on with their home. They wanted the loan modification papers. They never received any loan modification documents. They told Respondent and Alvarado that they had been given a Three Day Notice to Quit from Sovereign Ventures, Inc. Respondent told the Robledos he was still working on their application for a loan modification. Respondent went to the Robledos' residence. Robledo testified that Respondent tore up the Three Day Notice to Quit.

13. The Robledos sought legal assistance to prevent foreclosure. The attorneys they contacted wanted too much money to represent them. The Robledos went to the Los Angeles Police Department to file criminal charges against Respondent and Alvarado. The police did not arrest Respondent. Criminal charges were never filed against him.

14. On September 30, 2010, the bank foreclosed on the Robledos' home. Eventually they received approximately \$28,000. from the sale. Robledo testified the Robledos never signed a contract for Respondent or anyone to sell their home. Robledo estimates she gave Respondent and Alvarado approximately \$6,400.

15. Respondent testified that he met the Robledos on January 21, 2010, at his office. He reviewed their mortgage related documents. Respondent said since the Robledos were two months behind in their mortgage he did not recommend that they refinance their mortgage loan. Also, because of the their debt, Respondent could not sell the Robledos' home through a short sale. As a real estate salesperson, Respondent cannot prepare a loan modification application (without the supervision of his employing broker) so he recommended that the Robledos see Alvarado. Alvarado prepares loan modification applications. The Robledos met with Alvarado. Respondent did not attend the meeting.

16. Respondent denied that he accepted any money from the Robledos. He testified he never did any work for them. Respondent told the police the same story. He said he assisted the Robledos with the September 2010 mortgage payment. They gave him a mortgage payment and he addressed the envelope for them. Respondent recalled that the Robledos called him once a month. He once went to their home. Respondent explained the Three Day Notice to Quit to the Robledos. They showed him advertisements regarding companies offering to help homeowners facing foreclosures. Respondent ripped up the advertisements recommending that the Robledos not go to them.

17. Respondent is currently employed by Julio Cesar Martinez, broker, J. C. Realty and Mortgage Corp., in Montebello. He buys and sells residential property. Respondent is active with his church. He volunteers at the church's events. Respondent also assists at the church's religious classes for adolescents. Respondent is married with no children.

LEGAL CONCLUSIONS AND DISCUSSION

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means evidence that is “so clear as to leave no substantial doubt” and is “sufficiently strong to command the unhesitating assent of every reasonable mind.” (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1190, [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

2. Robledo’s testimony was sometimes confusing. For example, she testified that her family gave \$6,400 to Respondent which was never sent to the bank. However, the record showed that the Robledos gave him \$3,460 that he failed to send to the bank. The evidence shows that the Robledos gave Respondent and Alvarado the following amounts which were not sent to Citibank;

- a) \$1,000 (cash) on Jan. 21, 2010;
- b) \$1,000 (money gram) on March 11, 2010; and
- c) \$1,460.34 (money grams) on Aug. 20, 2010. (Totaling \$3,460.)

3. However, on the main issue regarding whether Respondent fraudulently took the Robledos’ money to prepare a loan modification application, Robledo was credible. The record clearly shows that the Robledos gave Respondent and Alvarado \$1,000 to prepare a loan modification application on January 21, 2010. Robledo identified Respondent at the hearing as one of the persons who took the Robledos’ money to obtain the loan modification. The receipt for \$1,000 was from Real Options Loan Modification Center dba Opciones Reales, a division of Remax Empire. The Borrowers Authorization lists the name of Respondent and Alvarado as representatives of Remax Empire dba Real Options Loan Modification Center. The receipt and authorization shows the two separate companies that employed Respondent and Alvarado were acting in concert. (Compare the companies’ names in Complainant’s exhibit 3, pp. 2-4; Findings 4, 5.)

4. Respondent’s testimony also corroborates Robledo’s testimony to an extent. He admitted he assisted the Robledos in sending their September 2010 mortgage payment. Respondent corroborated that Robledo called him often. He said he went to the Robledos’ home. Respondent ripped up some paperwork in the presence of the Robledos. He said he ripped up advertisements. Robledo testified Respondent ripped up the Three Day Notice to Quit. Respondent’s admissions indicate he had an ongoing relationship with the Robledos. If he did not perform any real estate related work for the Robledos, he would have no need to have gone to their home or frequently speak with them.

5. The trier of fact may “accept part of the testimony of a witness and reject another even though the latter contradicts the part accepted.” (*Stevens v. Parke David & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or

interferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.)

6. The evidence shows that the real estate license of Respondent Hector A. Vasquez may be disciplined pursuant to Business and Professions Code⁴ section 10085.6, subdivision (a)(1). Pursuant to Code section 10085.6, subdivision (a), a real estate licensee is prohibited from negotiating, attempting to negotiate, arranging, attempting to arrange, a mortgage loan modification or any loan forbearance for a fee paid by the borrower: And under subdivision (a)(1), a licensee is prohibited from (1) claiming, demanding, charging, collecting, or receiving any compensation until after the licensee has fully performed each and every service the licensee contracted to perform, or represented that he would perform.

7. Cause exists to suspend or revoke the license of Respondent pursuant to Code section 10085.6, subdivision (a)(1), by reason of Factual Findings 3 through 17, in that Respondent charged the borrower, the Robledos, to obtain a loan modification but did not take any steps to do so.

8. The Bureau seeks to suspend or revoke the real estate license of Respondent pursuant to Code sections 10145, subdivision (c). Pursuant to Code section 10145, subdivision (c), a real estate salesperson who accepts funds from another shall immediately deliver the funds to the salesperson’s broker or into a neutral escrow depository or shall deposit the funds into the broker’s trust fund account.

9. Cause exists to suspend or revoke the license of Respondent pursuant to Code section 10145, subdivision (c), by reason of Factual Findings 3 through 17, in that Respondent collected advance fees from the borrower, the Robledos and did not turn the funds over to his employing broker, Remax Empire, Inc.

10. Respondent misappropriated funds received from the borrower without the knowledge or permission of the borrower. He misappropriated at least \$3,460.34 from the Robledos.

11. Respondent promised the Robledos he would obtain a loan modification to save their home. He never prepared any documents necessary to obtain the loan modification for the Robledos. Respondent falsely informed the Robledos that their mortgage payments were sent to Citibank. He advised the Robledos that they not pay their property taxes and homeowners’ insurance from which can be reasonably inferred that he knew the property had been conveyed and the Robledos would have had no further obligation for taxes or insurance on the property.

⁴ All further statutory references are to the Business and Professions Code except when noted.

12. Respondent interfered with the communication between the Robledos and Citibank regarding the foreclosure of their home. Respondent confused and lied to the Robledos about what they should do regarding saving their home from foreclosure as set forth in Findings 8 through 10.

13. Cause exists to suspend or revoke the license of Respondent pursuant to Code section 10176, subdivisions (a), and (i), by reason of Factual Findings 3 through 17, in that Respondent made substantial misrepresentations to the Robledos by charging them for a preparation of a loan modification application, misappropriating their mortgage payments, and failing to represent their interests to the lender.

14. Cause exists to suspend or revoke the license of Respondent pursuant to Code section 10177, subdivision (d), by reason of Factual Findings 3 through 17, in that Respondent willfully disregarded and violated the Real Estate Law in his dealings with the Robledos.

15. Code section 10131 defines a real estate broker as someone who, for compensation, negotiates to do one or more of the following acts as described in subdivision (d), soliciting borrowers or lenders or negotiating loans or collecting payments or performing services for borrowers or lenders or note owners in connection with loans secured by liens on real property; and subdivision (e), selling or buying or offering or exchanging a real property sales contract, or a promissory note secured by a lien on real property, and performing services for the holders thereof.

16. Code section 10131.2 defines a real estate broker as someone who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advanced fee in connection with employment undertaken to promote the sale or lease of real property or by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or to obtain a loan.

17. Cause exists to suspend or revoke the license of Respondent pursuant to Code section 10130, by reason of Factual Findings 3 through 17, in that Respondent engaged in the business of a real estate broker in that he solicited, charged, and accepted money from the Robledos to prepare a loan modification while not supervised by Remax Empire, Inc., his employing broker, as required by Code section 10132.

18. As cause exists to discipline Respondent's real estate salesperson license and licensing rights, a determination must be made whether he is fit for continued licensure. Such a determination is to occur only after consideration of Respondent's conduct and any evidence of justification, aggravation, or mitigation of his conduct. Respondent, of course, is permitted to introduce evidence of rehabilitation. (See *Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal. App.3d 737, 747.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

19. Respondent did provide some evidence of rehabilitation. Four years have passed since he committed the misconduct. Respondent has no other record of misconduct. He is active in his church. However, despite overwhelming evidence, Respondent did not admit to or take responsibility for his actions. His misconduct caused a family to lose their home. Respondent used his real estate salesperson license for his own greed, seriously harming the public.

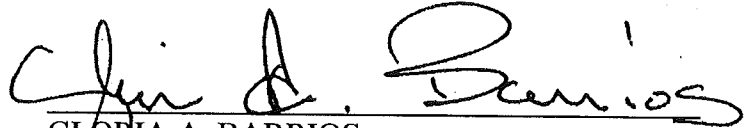
20. Any factual allegations set forth in the Accusation not addressed herein were either not proven or deemed surplusage.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Hector A. Vasquez, under the Real Estate Law are revoked.

DATED: January 28, 2014



GLORIA A. BARRIOS
Administrative Law Judge
Office of Administrative Hearings