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FILED

JUL 27 2012

DEPARTMENT OF REAL ESTATE
BY: CR

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-38300 LA
)
GARZA REALTY, INC.,) A C C U S A T I O N
CARLOS ALFREDO ROMERO,)
individually and as designated)
officer of Garza Realty, Inc.,)
and CESAR EMILIO GARZA,)
)
Respondents.)

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against GARZA REALTY, INC., CARLOS ALFREDO ROMERO, individually
and as designated officer of Garza Realty, Inc., and CESAR
EMILIO GARZA (collectively "Respondents"), is informed and
alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, makes this Accusation
in her official capacity.

2.

1
2 From December 29, 2008 through the present, Respondent
3 GARZA REALTY, INC. ("Respondent GRI") has been licensed under
4 the Real Estate Law (Part 1 of Division 4 of the California
5 Business and Professions Code "Code") as a real estate
6 corporation, License ID 01856487.

7
8 3.

9 From January 24, 2002 through the present, Respondent
10 CARLOS ALFREDO ROMERO ("Respondent ROMERO") has been licensed
11 under the Real Estate Law (Part 1 of Division 4 of the Code) as
12 a real estate broker, License ID 01205969.

13 4.

14 At all times relevant herein, Respondent GRI was
15 authorized to act by and through Respondent ROMERO as its broker
16 and officer designated pursuant to Code Section 10159.2 to be
17 responsible for ensuring compliance with the Real Estate Law.

18 5.

19 From April 19, 2006 through the present, Respondent
20 CESAR EMILIO GARZA aka Cesar A. Lopez Garza ("Respondent GARZA")
21 has been licensed under the Real Estate Law (Part 1 of Division
22 4 of the Code) as a real estate salesperson, License ID
23 01746704. At all times relevant herein, Respondent GARZA's
24 employing broker was GRI.

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FIRST CAUSE OF ACCUSATION
(Suspended Corporate Status)

6.

Respondent GRI is a California corporation formed on October 2, 2008. Respondent GARZA is the Chief Executive Officer of GCI. Respondent ROMERO is an officer or director of GCI.

7.

On January 3, 2012, the California Franchise Tax Board suspended the corporate powers, rights and privileges of Respondent GCI pursuant to the provisions of the California Revenue and Taxation Code. GCI's corporate status remains suspended.

8.

The suspension of Respondent GCI's corporate powers is in violation of Section 2742(c), Title 10, Chapter 6, California Code of Regulations ("Regulations"), and constitutes grounds to suspend or revoke Respondent GCI's corporate real estate broker license pursuant to Code Sections 10177(d) and/or 10177(g). Said suspension is a violation of Code Section 10177(f) in that it would have constituted grounds for the denial of the corporate real estate broker license under Regulation section 2742.

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SECOND CAUSE OF ACCUSATION
(Advance Fee Violations)

9.

There is hereby incorporated in this Second, separate and distinct Cause of Accusation, all of the allegations contained in Paragraphs 1 through 8, with the same force and effect as if herein fully set forth.

10.

Code Section 10132 defines a real estate salesperson as a person who, for compensation or in expectation of compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in Code Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6.

11.

Code Section 10131 defines a real estate broker as a person who: (d) solicits borrowers, negotiates loans, collects payments or performs services for borrowers in connection with loans secured directly or collaterally by liens on real property.

12.

Code Section 10131.2 defines a real estate broker as a person who engages in the business of claiming, demanding, charging, receiving, collecting or 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

1 other offering to sell, lease, exchange or rent property or a
2 business opportunity, or to obtain a loan or loans thereon.

3 13.

4 Code Section 10026, in pertinent part, defines an
5 advance fee as a fee that is claimed, demanded, charged,
6 received, or collected by a licensee for services requiring a
7 license. A person who proposes to collect an advance fee as
8 defined in Code Section 10026 must submit to the Commissioner
9 not less than ten calendar days before publication or other use,
10 all materials to be used in advertising, promoting, soliciting
11 and negotiating an agreement calling for the payment of an
12 advance fee including the form of advance fee agreement proposed
13 for use, pursuant to Regulation 2970. Code Section 10085 also
14 allows the Commissioner to require that any and all materials
15 used in obtaining advance fee agreements, including contract
16 forms, be submitted at least 10 calendar days before they are
17 used.

18 14.

19 Code Section 10137 states that is unlawful for any
20 licensed real estate broker to employ or compensate, directly or
21 indirectly, any person for performing acts requiring a real
22 estate license, who is not a real estate salesperson licensed
23 under the broker employing or compensating him or her.

24 15.

25 On October 11, 2009, then Governor Arnold
26 Schwarzenegger signed Senate Bill 94 (Calderon), and the
27 legislation took effect immediately upon his signature. Thus,

1 California law prohibited any person, including real estate
2 licensees and attorneys, from demanding or collecting an advance
3 fee from a consumer for loan modification or mortgage loan
4 forbearance services affecting 1 - 4 unit residential dwellings.

5 16.

6 The following notice was prominently featured on the
7 Department's website as of October 11, 2009:

8 "IF YOU ARE A REAL ESTATE BROKER, OR THE DESIGNATED
9 OFFICER OF A LICENSED CORPORATION, WHO HAS BEEN ISSUED A "NO
10 OBJECTION" LETTER BY THE DEPARTMENT OF REAL ESTATE FOR LOAN
11 MODIFICATION OR OTHER MORTGAGE LOAN FORBEARANCE SERVICES, YOU
12 CAN NO LONGER ENTER INTO THESE AGREEMENTS EFFECTIVE AS OF
13 OCTOBER 11, 2009, NOR CAN YOU COLLECT ANY ADVANCE FEES FOR SUCH
14 SERVICES. Agreements entered into and advance fees collected
15 prior to October 11, 2009 are not affected. Advance fees
16 inadvertently collected after October 11, 2009 must be fully
17 refunded. All real estate licensees should become familiar with
18 the provisions of SB94 as there are substantial administrative
19 and criminal penalties for violations."

20 17.

21 Loan Modification Group, On Time Financial Center, and
22 Flor Santillan are not licensed in any capacity by the
23 Department. In or about December, 2008, Respondent GCI
24 registered use of the fictitious business name, Loan
25 Modification Group with the Los Angeles County Clerk-Recorder's
26 Office.

27

18.

1
2 For an unknown period of time beginning no later than
3 October 19, 2009, Respondents, while doing business as Loan
4 Modification Group or On Time Financial Center, solicited and
5 offered loan services to consumers, including services to assist
6 them in negotiating with lenders, foreclosure forbearance, or
7 obtaining a loan modification. Respondents engaged in the
8 business of claiming, demanding, charging, receiving, collecting
9 or contracting for the collection of advance fees, within the
10 meaning of Code Section 10026 including, but not limited to, the
11 following loan activities with respect to loans which were
12 secured by liens on real property.

19.

13
14 On or about October 19, 2009, Flor Santillan, an
15 unlicensed person working on behalf of Respondents, offered to
16 assist borrower Yolanda Z. with loan modification and
17 negotiation services. Yolanda Z. entered into a written advance
18 fee agreement with Loan Modification Group for loan modification
19 and negotiation services in connection with a loan secured by a
20 lien on real property. Yolanda Z. paid an advance fee of \$2,850
21 to On Time Financial Center for loan modification and
22 negotiation services. Flor Santillan and Respondent GARZA made
23 misrepresentations to Yolanda Z. in order to induce Yolanda Z.
24 to enter into the advance fee agreement including, among others,
25 that Loan Modification Group could obtain a loan modification
26 for Yolanda Z. and possibly obtain a lower fixed interest rate
27 on Yolanda Z.'s mortgage. Respondents failed to perform the

1 loan modification and negotiation services that had been
2 promised to Yolanda Z. Respondents failed to provide an
3 accounting of any services done for Yolanda Z. or an accounting
4 of the advance fees collected from Yolanda Z.

5 20.

6 Respondents collected the advance fees described in
7 Paragraph 19, above, pursuant to the provisions of a written
8 agreement which constitutes an advance fee agreement within the
9 meaning of Code Section 10085.

10 21.

11 Respondents failed to comply with the requirements for
12 handling of advance fees, in violation of Code Section 10146.

13 22.

14 The conduct, acts and/or omissions of Respondents as
15 set forth above are in violation of Code Sections 10085,
16 10085.5, 10085.6 and 10146 and Regulation Section 2970 and
17 constitute grounds for the suspension or revocation of the
18 licenses and license rights of Respondents GCI and ROMERO
19 pursuant to Code Sections 10177(d) and/or 10177(g).

20 23.

21 Respondents' conduct, acts and/or omissions as set
22 forth above constitute grounds for the suspension or revocation
23 of the licenses and license rights of Respondents GCI, ROMERO,
24 and GARZA pursuant to Code Sections 10176(a) (making any
25 substantial misrepresentation), 10176(b) (making any false
26 promises of a character likely to influence, persuade or
27 induce), 10176(i) (conduct...which constitutes fraud or dishonest

1 dealing), 10177(d) (violation of the Real Estate Law), and/or
2 10177(g) (negligence).

3 THIRD CAUSE OF ACCUSATION
4 (Unlicensed activity)

5 24.

6 There is hereby incorporated in this Third, separate,
7 Cause of Accusation, all of the allegations contained in
8 Paragraphs 1 through 23 above, with the same force and effect as
9 if herein fully set forth.

10 25.

11 The activities described in Paragraph 19, above,
12 require a real estate license under Code Sections 10131(d) and
13 10131.2. Respondents GRI and ROMERO violated Code Section 10137
14 by employing and/or compensating Flor Santillan, an individual
15 who was not licensed as a real estate salesperson or broker, to
16 perform activities requiring a license, which constitutes cause
17 for the suspension or revocation of the licenses and license
18 rights of Respondents GCI and ROMERO, pursuant to Code Sections
19 10137, 10177(d) and/or 10177(g).

20 FOURTH CAUSE OF ACCUSATION
21 (Failure to Supervise)

22 26.

23 There is hereby incorporated in this Fourth, separate,
24 Cause of Accusation, all of the allegations contained in
25 Paragraphs 1 through 25 above, with the same force and effect as
26 if herein fully set forth.

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27.

The conduct, acts and/or omissions of Respondent ROMERO, in allowing Respondent GCI to violate the Real Estate Law, as set forth above, constitutes a failure by Respondent ROMERO, as the officer designated by the corporate broker licensee, to exercise the supervision and control over the activities of Respondent GCI, as required by Code Section 10159.2 and Regulation 2725, and is cause to suspend or revoke the real estate license and license rights of Respondent ROMERO under Code Sections 10177(h), 10177(d) and/or 10177(g).

28.

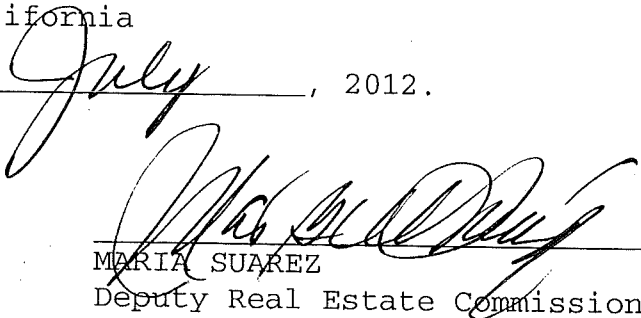
Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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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 all licenses and/or license rights of Respondents
5 GARZA REALTY, INC., CARLOS ALFREDO ROMERO, individually and as
6 designated officer of Garza Realty, Inc., and CESAR EMILIO GARZA
7 under the Real Estate Law (Part 1 of Division 4 of the Business
8 and Professions Code), for the cost of investigation and
9 enforcement as permitted by law, and for such other and further
10 relief as may be proper under other provisions of law.

11 Dated at Los Angeles, California

12 this 23rd day of July, 2012.

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16 MARIA SUAREZ
17 Deputy Real Estate Commissioner
18
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21

22 cc: Garza Realty, Inc.
23 Carlos Alfredo Romero
24 Cesar Emilio Garza
25 Maria Suarez
26 Sacto
27