

FILED

BEFORE THE BUREAU OF REAL ESTATE

MAR 10 2014

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By *J. Remond*

In the Matter of the Accusation of)	CalBRE No. H-38385 LA
)	
<u>CARLOS VELAZQUEZ & ASSOCIATES,</u>)	OAH No. 2013020329
INC., CAMILL RAYE GUESS,)	
individually and as former designated)	
officer of Carlos Velazquez & Associates,)	
Inc., and <u>CARLOS A. VELAZQUEZ,</u>)	
)	
Respondents.)	
)	

DECISION

The Proposed Decision dated February 20, 2014, of the Administrative Law Judge Joseph D. Montoya, of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision revokes Respondent VELAZQUEZ & ASSOCIATES, INC.'s real estate corporation license outright. The Decision also revokes Respondent CARLOS A. VELAZQUEZ's real estate salesperson license and/or license rights; however, the right to a restricted real estate salesperson license is granted to respondent CARLOS A. VELAZQUEZ.

If and when a petition for removal of restrictions is submitted, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is enclosed for respondent's information.

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 S. Bell
Wayne S. Bell

**BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

CARLOS VELAZQUEZ & ASSOCIATES,
INC., and CARLOS VELAZQUEZ
individually,

Respondents.

Case No. H-38385-LA

OAH No. 2013020329

PROPOSED DECISION

The hearing in the above-captioned matter was held on January 21, 2014, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided. Complainant was represented by Lissete Garcia, Counsel, Bureau of Real Estate (Bureau), Department of Consumer Affairs. Respondent Carlos Velazquez appeared with his attorney, Rizza D. Gonzales, Century Law Group.

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follows.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant, Robin Trujillo, filed the Accusation in the above-captioned matter while acting in her official capacity as Deputy Real Estate Commissioner of the Department of Real Estate, of the State of California. After the Accusation was filed, the Department of Real Estate became the Bureau of Real Estate.

2. (A) Respondent Carlos Velazquez (Respondent) has been licensed by the Department and the Bureau as a real estate salesperson, beginning in January 1996. He holds license number 01204943.

(B) Respondent Carlos Velazquez & Associates, Inc. (CVA) was licensed by the Department as a corporate real estate broker, license number 01481170. That license expired in May 2013. During the times relevant to this case, CVA was licensed to do

business under the names Century 21 South Coast and Su Casa Mortgage. The Franchise Tax Board suspended CVA's powers, rights, and privileges on December 1, 2010; thus CVA did not have the right to appear and defend in this proceeding.

(C) Respondent was licensed as a salesperson to CVA during the period relevant to this case. He was the founder and sole shareholder of CVA. In June 2009, Camille Raye Guess (Guess) became the designated officer for CVA, and she held that position until December 7, 2010. Ms. Guess was named as a respondent in this matter, but she failed to respond to the Accusation, leaving her in default, and her license was later revoked.

The Pictor Avenue Transaction

3. On October 5, 2009, CVA, under its business name Century 21 South Coast listed a house for sale in the Multiple Listing Service (MLS). CVA was identified as the listing broker, and Respondent was identified as the listing agent. The listing was for a house located on Pictor Avenue in Murrieta, California (Pictor Avenue house). The listing price was \$299,000. The MLS listing stated that the house was occupied by a tenant, who was identified as Joseph Anthony Tafolla.

4. On May 7, 2010, John D. Bender (Bender), a real estate licensee, submitted an offer to purchase the Pictor Avenue home, on behalf of Mr. Sayyasouk, for \$315,000. The seller, identified as Kristina Garcia, made a counter offer on May 11, and the buyer made a counter offer to that. That last counter offer was accepted. At some point, it was revealed that the seller was holding herself out as trustee of the 36875 Pictor Avenue Revocable Trust, and selling the property in that capacity.¹

5. The seller's counter offer stated that "this transaction is not a short sale." (Ex. 5, p. 15.)² That statement was not true.

6. Bender took steps on behalf of the buyer to complete the transaction. He delivered the buyer's earnest money check to Real Time Escrow on May 13, 2010, in the amount of \$3,200. Buyer spent \$495 to have the house appraised by the buyer's lender.

7. Bender was having difficulty in communicating with Respondent. The former was attempting to move his client's financing forward, and was stymied because Respondent and the seller had not transmitted a preliminary title report, necessary to complete the loan process.

¹ That is how the seller was identified in escrow documents, such as the receipt for earnest money deposit.

² The page number refers to a Bates stamp number, and will for other exhibits cited.

8. In early June 2010, Bender, during a telephone conversation with an assistant at CVA, first learned that the seller—Ms. Garcia—did not own the Pictor Avenue house; she was trying to buy the house in a short sale from Mr. Tafolla, the person identified on the MLS listing as the tenant. Ms. Garcia and the trust identified as the seller in the escrow documents did not own the property, and this information contradicted the written representation, made in the seller's counter-offer, that the sale to Bender's client was not a short sale.

9. Thereafter, Bender sent Respondent a written Notice to Seller to Perform (NPS), which demanded that the seller provide a preliminary title report, and a recorded grant deed from Tafolla to Kristina Garcia. When those documents were not forthcoming, Bender's client cancelled the transaction. As of the hearing date, the \$495 spent by Bender on his client's behalf for an appraisal had not been repaid.

10. Bender never actually spoke to Respondent about the transaction. Respondent denies receiving some of the written communications, which may have resulted from the fact that Respondent's e-mail address as set forth on the MLS document was incorrect in a minute detail: there should have been a period between his first and last name, but that was not set out on the MLS document. However, Bender was speaking regularly to the escrow officer, who had some communication with CVA, and Bender had had conversations with staff at CVA regarding the transaction. Respondent was in contact with the escrow agent, as evidenced by e-mails between him and that person regarding the commissions. (Ex. 6, p. 12.)³

Other Findings

11. Respondent had done business with Tafolla before, and had represented him when Tafolla first bought the Pictor Avenue house. At the time of this transaction, the house was heavily “upside down;” Tafolla had a first and second deed of trust recorded against the property in 2005, with total values at that time of \$560,000. It is fairly inferred that he had not been able to pay much against the principle debt by 2009.

12. The price of the Pictor Avenue house in the pending sale from Tafolla to Garcia was less than \$315,000; one of the e-mails obtained from the escrow company shows a sale price of \$275,000.⁴ Thus, if the entire transaction had consummated, Garcia stood to make a

³ The e-mails reference escrow number 19365-SJ, the number assigned to the Garcia-Sayyasouk transaction. (Compare ex. 6, p. 4 with ex. 6, pp. 8-11.)

⁴ Interestingly, that e-mail, to a title company, refers to “a double,” where Garcia is buying the property from Tafolla for \$275,000, but reselling it for \$255,000 to a Yamei Li. The latter may be a lender, as that transaction carries a note that the “loan side” escrow bears the same number as the one opened for the Garcia-Sayyasouk transaction.

profit, while the lenders involved in the short sale would not have been aware of that higher selling price to Bender's client, Sayyasouk. At the same time, Respondent stood to obtain a commission in both sales, that is, from Tafolla to Garcia, and from Garcia to Sayyasouk.

13. Respondent pointed out that the escrow instructions prepared for the Garcia-Sayyasouk transaction gave some notice that Garcia didn't own the property. Bender apparently missed that provision when he and his client reviewed the escrow instructions. However, those instructions were prepared after the sale contract was made, that contract holding an affirmative representation that there was no short sale involved. The language in the escrow does not give notice that Garcia was trying to buy the property in a short sale, plainly a more complicated transaction than a straight purchase by Garcia.⁵

14. Respondent had a business relationship with Garcia, who was listed with the Secretary of State as a director of CVA in April 2011. Whether she was a director of CVA before that is unknown, as the Secretary of State appeared to have only two Statement of Information filings for CVA. (See Ex. 4.)

15. While Bender and his client, Sayyasouk, were tied up in the deal for approximately one month, the only out of pocket harm was their expenditure of \$495 for an appraisal.

16. Respondent was operating CVA as if he was the designated broker; there is no reliable evidence that Guess was acting as the broker of record, and there is no evidence that Guess had any knowledge of either transaction that pertained to the Pictor Avenue house.

17. Since the events in question, Respondent has closed CVA, and is working from an office in his home, under the supervision of a broker. Respondent has no prior discipline. He asserted that he had never engaged in a dual escrow prior to the transaction in question, and that he has not engaged in such since then. Character witnesses who appeared on Respondent's behalf spoke very highly of Respondent, and from that point of view, his behavior in this matter appears unusual.

Costs

18. The Department and Bureau have incurred costs of investigation and enforcement in the amount of \$2,492 during this proceeding. That amount is reasonable.

⁵ The provision, titled "Concurrent Closing Disclosure" states that the property is being purchased by Garcia from Tafolla "for a lesser purchase price closing concurrently with the conveyance contemplated herein; Buyer is aware that some of the proceeds may be used to consummate the initial purchase of said property by the Seller in this transaction." (Ex. 6, p. 70.) Nothing in this language discloses that Garcia was engaged in a short sale which would require the forbearance of one or more lenders.

LEGAL CONCLUSIONS

1. CVA violated California Code of Regulations (CCR), title 10, section 2742, subdivision (c),⁶ by allowing its corporate powers to be suspended by the State of California. This Conclusion is based on Factual Finding 2(B). Therefore, its license is subject to discipline pursuant to Business and Professions Code section 10177, subdivisions (d) and (g).

2. Respondent Carlos Velazquez failed to disclose facts that were material to the transaction to sell the Pictor Avenue house to Sayyasouk, based on Factual Findings 3 through 15. Such omissions constituted misrepresentation, as does the statement that the transaction did not involve a short sale. (Factual Finding 5.) Respondent Velazquez and CVA are therefore subject to discipline pursuant to Business and Professions Code sections 10176, subdivision (a), and 10177, subdivision (j).

3. Cause was established pursuant to Business and Professions Code section 10106 to require Respondent Velazquez to pay the costs of investigation and prosecution in this matter, based on Legal Conclusions 1 and 2. The reasonable amount of costs is \$2,492, based on Factual Finding 18.

4 (A). Respondent Velazquez failed to disclose material facts to a buyer of real estate, and allowed a false statement to be set out in a real estate contract. Fortunately, the harm was minimal, but it could have been substantial. A real estate agent is a fiduciary, and Respondent's conduct was antithetical to the proper discharge of fiduciary duties.

(B) The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (See, e.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Given Respondent's otherwise clean record, and the passage of time since the events in question, the public can be protected with the order that follows.

ORDER

As to Respondent Velazquez

All licenses and licensing rights of Respondent Carlos Velazquez under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code upon his application for such a restricted license and if he pays the Bureau of Real Estate the appropriate fee for the restricted license within 90 days of the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

⁶ All further citations to the CCR shall be to title 10 thereof.

1. The restricted license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(A) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(B) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulation of the Real Estate Commissioner or conditions attaching to the restricted license.

2. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for 15 days from the date of issuance of said restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the issuance of the restricted license to Respondent.

4. During the period that the restricted license is in effect Respondent shall obey all laws, rules, and regulations governing the rights, duties, and responsibilities of a real estate licensee in the State of California.

5. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(A) That the employing broker has read the Decision which is the basis for issuing the restricted license; and,

(B) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

6. Respondent shall, within nine months of the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

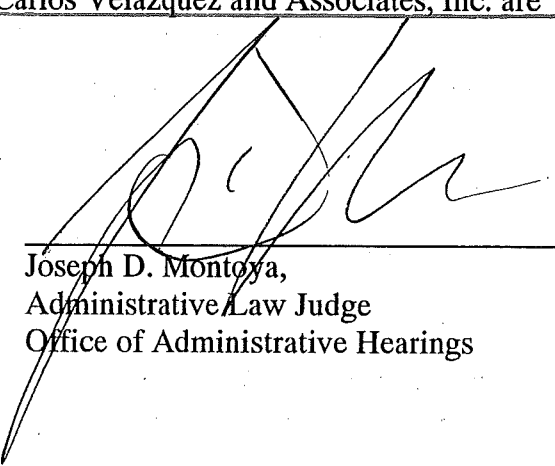
7. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent' license until Respondent passes the examination.

8. Respondent shall, prior to issuance of the restricted license and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of payment in the amount of \$495 to John D. Bender.

As to CVA

All licenses and licensing rights held by Carlos Velazquez and Associates, Inc. are hereby revoked.

February 20, 2014



Joseph D. Montoya,
Administrative Law Judge
Office of Administrative Hearings