

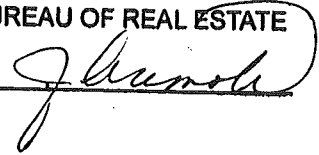
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

JUL 22 2014

BUREAU OF REAL ESTATE

By



BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	Cal BRE No. H-38967 LA
)	OAH No. 2013090797
CUCA SANCHEZ,)	
)	<u>STIPULATION & AGREEMENT</u>
)	<u>AND DECISION AFTER</u>
Respondent.)	<u>REJECTION</u>
)	

The California Bureau of Real Estate ("Bureau") filed an Accusation against CUCA SANCHEZ ("Respondent") on July 19, 2013. On March 13, 2014, a hearing was held and evidence was received; the case was deemed submitted on March 13, 2014.

On April 10, 2014, the Proposed Decision of Administrative Law Judge ("ALJ") Howard Posner was issued, and determined, among other things, that Respondent's real estate salesperson license should be revoked; provided, however, Respondent should be issued a restricted real estate license by

CalBRE - H-38967 LA - STIPULATION & AGREEMENT AND DECISION AFTER REJECTION

1 the Real Estate Commissioner ("Commissioner") pursuant to
2 section 10156.5 of the Business and Professions Code ("Code").

3 On June 16, 2014, the Commissioner rejected the
4 Proposed Decision of April 10, 2014.

5 The parties wish to settle this matter without further
6 proceedings.

7
8 IT IS HEREBY STIPULATED by and between Respondent CUCA
9 SANCHEZ, representing herself, and the Bureau, acting by and
10 through Cheryl Keily, Counsel for the Bureau, as follows for the
11 purpose of settling and disposing of the Accusation filed by the
12 Bureau:

13 I acknowledge that I have received, read and
14 understand the Accusation filed by the Bureau of Real Estate
15 against me on July 19, 2013, and the Statement to Respondent
16 and the Discovery Provisions of the APA sent to me in
17 connection with the Accusation.

18 I hereby admit that the allegations contained in the
19 Accusation filed against me are true and correct and constitute
20 a basis for the discipline of my real estate salesperson
21 license.

22 I further acknowledge that the Commissioner held a
23 hearing on this Accusation on March 13, 2014, before the Office
24 of Administrative Hearings for the purpose of proving the
25 allegations therein. I was present at the hearing and
26

1 represented myself, and participated therein. Further, I have
2 had an opportunity to read and review the Proposed Decision of
3 the Administrative Law Judge.

4 I understand that pursuant to Government Code Section
5 11517(c), the Commissioner has rejected the Proposed Decision
6 of the Administrative Law Judge. I further understand that
7 pursuant to the same Section 11517(c), the Real Estate
8 Commissioner may decide this case upon the record, including
9 the transcript, without taking any additional evidence, after
10 affording me the opportunity to present written argument to the
11 Commissioner.

12 I further understand that by signing this Stipulation
13 and Agreement, I am waiving my right to obtain a dismissal of
14 the Accusation through proceedings under Government Code
15 Section 11517(c) if this Stipulation and Agreement is accepted
16 by the Commissioner. However, I also understand that I am not
17 waiving my rights to further proceedings to obtain a dismissal
18 of the Accusation if this Stipulation and Agreement is not
19 accepted by the Commissioner.

20 I hereby request that the Commissioner in his
21 discretion revoke my real estate salesperson license and issue
22 to me a restricted real estate salesperson license under the
23 authority of Code Section 10156.5 if I make application
24 therefor and pay to the Bureau the appropriate fee for said
25 license within 90 days from the effective date of the Decision
26 herein.

27 CalBRE - H-38967 LA - STIPULATION & AGREEMENT AND DECISION AFTER REJECTION

1 I further understand that the restricted license
2 shall be subject to the provisions of Section 10156.7 of the
3 Code and the following conditions, limitations and restrictions
4 will attach to the restricted license issued by the Bureau.

5 By reason of the foregoing and solely for the purpose
6 of settlement of the Accusation without further administrative
7 proceedings, it is stipulated and agreed that the Commissioner
8 shall adopt the following Order:

9 ORDER

10 All licenses and licensing rights of Respondent CUCA
11 SANCHEZ under the Real Estate Law are revoked; provided,
12 however, a restricted real estate salesperson license shall be
13 issued to Respondent pursuant to Code Section 10156.5 if
14 Respondent makes application therefor and pays to the Bureau the
15 appropriate fee for the restricted license within 90 days from
16 the effective date of this Decision.

17
18 The restricted license issued to Respondent shall be
19 subject to all of the provisions of Section 10156.7 of the Code
20 and to the following conditions, limitations and restrictions
21 imposed under the authority of Section 10156.6 of the Code:

22
23 1. The restricted license issued to Respondent may be
24 suspended prior to hearing by Order of the Commissioner in the
25 event of Respondent's conviction or plea of nolo contendere to a
26

1 crime which is substantially related to Respondent's fitness or
2 capacity as a real estate salesperson licensee.

3 2. The restricted license issued to Respondent may be
4 suspended prior to hearing by Order of the Commissioner on
5 evidence satisfactory to the Commissioner that Respondent has
6 violated provisions of the Real Estate law, the Subdivided Lands
7 Law, Regulations of the Real Estate Commissioner or conditions
8 attaching to the restricted license.

9 3. Respondent shall not be eligible to apply for
10 issuance of an unrestricted real estate salesperson license nor
11 for the removal of any of the conditions, limitations or
12 restrictions of a restricted license until four (4) years have
13 elapsed from the effective date of this Decision.

14 4. Respondent shall submit with any application for
15 license under an employing broker, or any application for
16 transfer to a new employing broker, a statement signed by the
17 prospective employing real estate broker, on a form approved by
18 the Bureau, which shall certify:

19 (a) That the employing broker has read the Decision
20 of the Commissioner which granted the right to a restricted
21 license; and

22 (b) That the employing broker will exercise close
23 supervision over the performance by the restricted licensee

1 relating to activities for which a real estate salesperson
2 license is required.

3 5. Respondent shall, within nine (9) months from the
4 effective date of this Decision, present evidence satisfactory
5 to the Commissioner that Respondent has, since the most recent
6 issuance of an original or renewal real estate salesperson
7 license, taken and successfully completed the continuing
8 education requirements of Article 2.5 of Chapter 3 of the Real
9 Estate Law, for renewal of a real estate salesperson license. If
10 Respondent fails to satisfy this condition, the Commissioner may
11 order the suspension of the restricted license until Respondent
12 presents such evidence. The Commissioner shall afford
13 Respondent the opportunity for a hearing pursuant to the APA to
14 present such evidence.


15 6. Within six months from the effective date of this
16 Decision, Respondent shall take and pass the Professional
17 Responsibility Examination administered by the Bureau, paying
18 the appropriate examination fee. If Respondent fails to satisfy
19 this condition, the Commissioner may order suspension of
20 Respondent's license until Respondent passes the examination.

21 7. Respondent shall pay the Bureau its costs of
22 investigation and enforcement in the amount of \$1,927.95 within
23 60 days of the effective date of this Decision.


24 ///

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DATED: July 7, 2014 
CHERYL D. KELLY, Counsel
BUREAU OF REAL ESTATE

I have read the Stipulation and Waiver and its terms are agreeable and acceptable to me. I understand that I am waiving my rights given to me by the California Administrative Procedure Act (including but not limited to Section 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights.

DATED: 7/7/14 
CUCA SANCHEZ
Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on _____, 2014.

IT IS SO ORDERED _____, 2014.

Real Estate Commissioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DATED: _____

CHERYL D. KEILY, Counsel
BUREAU OF REAL ESTATE

I have read the Stipulation and Waiver and its terms are agreeable and acceptable to me. I understand that I am waiving my rights given to me by the California Administrative Procedure Act (including but not limited to Section 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights.

DATED: _____

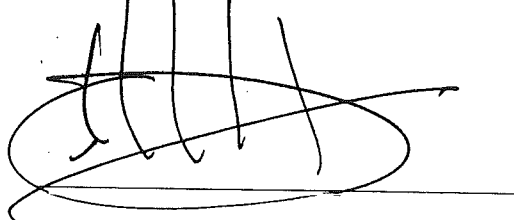
CUCA SANCHEZ
Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on JUL 23 2014, 2014.

IT IS SO ORDERED July 21, 2014.

Real Estate Commissioner



By: JEFFREY MASON
Chief Deputy Commissioner

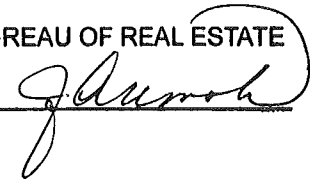
Flag

FILED

JUN 16 2014

BUREAU OF REAL ESTATE

By



BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

CUCA SANCHEZ,

Respondent.

No. H- 38967 LA

OAH No. 2013090797

NOTICE

TO: CUCA SANCHEZ, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 10, 2014, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 10, 2014, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on March 13, 2014, any written argument hereafter submitted on behalf of Respondent and Complainant.

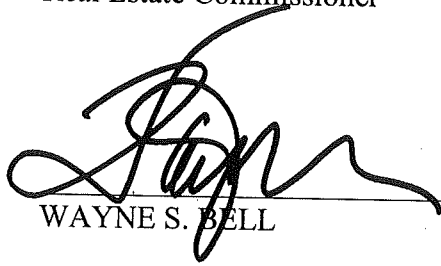
Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of March 13, 2014, at the

1 Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for
2 good cause shown.

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the
5 Bureau of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 6/16/2014

7 Real Estate Commissioner

8
9
10 
11 WAYNE S. BELL

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation of:

CUCA SANCHEZ,

Respondent.

Case No. H-38967 LA

OAH No. 2013090797

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on March 13, 2014.

Cheryl D. Keilly, Staff Counsel, represented Complainant Robin Trujillo, Deputy Real Estate Commissioner in the Bureau of Real Estate (Bureau).

Respondent Cuca Sanchez represented herself.

Oral and documentary evidence was received and the matter was submitted March 13, 2014.

Complainant brings this Accusation to revoke Respondent's real estate salesperson license. For the reasons set out below, the license is revoked, but Respondent may apply for a restricted license with a conditional suspension.

FACTUAL FINDINGS

1. Complainant issued this Accusation solely in her official capacity.
2. Respondent obtained a real estate salesperson license on July 18, 2006. It was renewed in 2010 and bears an expiration date of July 18, 2014.

Unauthorized Practice

3. Respondent has worked continuously as a real estate salesperson under licensed brokers' supervision since becoming licensed. Beginning about 2009, she had a side business, dealing directly with clients to get their mortgage loans modified. She estimates that she did about 80 loan modifications, with what she calls a "high rate of

success.” She charged each client \$1,000 for “clerical overhead” before she started work on their loan modification, and another \$1,000 if she succeeded in getting the loan modified. Both payments were made directly to Respondent. No payment was made to her employing broker. Respondent submitted no paperwork to her broker. The broker had no contact with her clients, and did not review or supervise her work.

Mitigation and Aggravation

4. Respondent believed that that she was entitled to do loan modifications as long as she had real estate license. She did not understand that she was not allowed to perform any services as a real estate licensee without the supervision of her employing broker.

5. Respondent’s activities resulted in one complaint to the Bureau, which the Bureau received October 6, 2011 from Kathryn Chavers. Respondent has no history of license discipline or other complaints to the Bureau about her. Respondent was forthright in her testimony and made a credible witness. Her testimony that she worked diligently to achieve results for her clients was credible. Her testimony that she worked diligently for the client who filed the complaint was also credible, supported by her notes of repeated communications with the lender.

6. Respondent no longer offers loan modification services.

Costs of Investigation and Enforcement

7. Complainant introduced evidence that its costs of investigation and enforcement were \$2,094.75, consisting of 5.75 of attorney time at \$89 per hour, 24.5 hours of Bureau staff time at \$62 per hour, and .8 hours of Bureau manager review (of work by Bureau staff) at \$80 per hour. These amounts are reasonable.

LEGAL CONCLUSIONS

1. Respondent’s actions are cause for license discipline because they constituted unlicensed practice as a real estate broker. A real estate broker’s license is required to perform services “for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property[.]” (Bus. & Prof Code, § 10131, subd (d).)¹ A real estate salesperson performing any such services must do so in the employ of a real estate broker. (§ 10132.) “No real estate salesperson shall be employed by or accept compensation from any person other than the broker under whom he or she is at the time licensed.” (§ 10137.) Respondent rendered services directly to clients and accepted money directly from clients. She was not permitted to do either of those things. Accepting an advance fee, even one characterized as “overhead,” was also something only a licensed

¹ Unless otherwise specified, further references to section or “§” are to the Business and Professions Code.

broker is permitted to do. (§ 10131.2) "It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license[.]" (§ 10130.)²

2. As paragraph 8 of the Accusation alleges, Respondent's license is subject to discipline under section 10177, subdivision (d), which provides for discipline if the licensee "[w]illfully disregarded or violated the Real Estate Law," or section 10177, subdivision (g), which provides for discipline for "negligence or incompetence in performing an act for which he or she is required to hold a license." As a licensee, Respondent was responsible for knowing what services she was, and was not, allowed to perform, and was responsible for knowing that she was not allowed to perform services independent of an employing broker. Her actions in dealing with clients without broker supervision therefore constituted both willful disregard of the Real Estate Law³ and negligence in performing an act for which a license was required. The Accusation also alleges that discipline is warranted under section 10177, subdivision (j), which provides for discipline for "fraud or dishonest conduct." There was no evidence of fraud, and no evidence of dishonesty separate from Respondent's being in violation of the Real Estate Law.

3. In conducting her loan modification business, Respondent's violation of her responsibilities as a licensee were systematic and regular, but she diligently pursued her clients' interests. (Factual Finding 5.) While license discipline is appropriate, revocation is not. The heightened supervision of a restricted license is appropriate.

4. As paragraph 8 of the Accusation alleges, the Bureau is entitled to have Respondent pay reasonable costs of investigation and enforcement. (§ 10106.) The Bureau's request for \$2,094.75 in costs is reasonable. (Factual Finding 7.)

ORDER

All of Respondent Cuca Sanchez's licenses and licensing rights under the Real Estate Law are revoked, but a restricted real estate salesperson license shall be issued to Respondent under Section 10156.5 of the Business and Professions Code if Respondent applies for, and pays to the Bureau of Real Estate the appropriate fee for, the restricted license within 90 days

² Civil Code section 2944.7 and Business and Professions Code section 10085.6 prohibit anyone (including brokers) from receiving advance fees for loan modification services, but the Accusation does not allege either statute as a ground for discipline.

³ Penal Code section 7 provides, "The word 'willfully,' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage." The Penal Code definition can be "persuasive in determining the intent of the Legislature in using that word in other statutes." *Brown v. State Dept. of Health* (1978) 86 Cal.App.3d 548, 554.

Not Adopted

from this Decision's effective date. The restricted license shall be subject to all 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:

1. The restricted license issued to Respondent may be suspended before hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license may be suspended before hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license, or for the removal of any of the conditions, limitations or restrictions of a restricted license until four years have elapsed from the effective date of this Decision.

4. All Respondent's licenses and licensing rights of under the Real Estate Law are suspended for a period of 30 days from the effective date of this Decision; but the suspension shall be stayed for one year if:

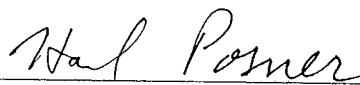
a. Respondent obeys all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

b. No final determination is made, after hearing or on stipulation, that cause for disciplinary action occurred within one year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, set aside the stay and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay shall become permanent.

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

6. Respondent shall pay the Bureau its costs of investigation and enforcement in the amount of \$1,927.95 within 60 days of the effective date of this Decision.

DATED: April 10, 2014



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings

Not Adopted