


BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
OCT 13 2016  
BUREAU OF REAL ESTATE  
By 

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In the Matter of the Accusation of ) CalBRE No. H-39499 LA  
VIP REAL ESTATE LOANS INC, )  
and LUIS J. VERDUGO, individually ) OAH No. 2014110802  
and as designated officer of VIP )  
REAL ESTATE LOANS, INC. )

DECISION

The Proposed Decision dated August 11, 2016, 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, but the right to a restricted broker license is granted to Respondent Verdugo.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 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 NOV 03 2016

IT IS SO ORDERED

10/8/2016

REAL ESTATE COMMISSIONER

  
WAYNE BELL

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

In the Matter of the Accusation Against:

VIP REAL ESTATE LOANS, INC.

and

LUIS J. VERDUGO, individually and as  
designated officer of VIP REAL  
ESTATE LOANS, INC.

Respondents.

Case No. H-39499 LA

OAH No. 2014110802

**PROPOSED DECISION**

This matter came on regularly for hearing before Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on July 11 and 12, 2016, at Los Angeles, California.

Cheryl Keily, Staff Counsel for the Bureau of Real Estate (the Bureau), represented Complainant Robin Trujillo, a Deputy Real Estate Commissioner of the State of California.

Respondent Luis J. Verdugo (Respondent Verdugo) appeared at hearing, and represented himself and Respondent VIP Real Estate Loans, Inc. (Respondent VIP).

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on July 12, 2016.

**FINDINGS OF FACT**

1. On June 24, 2014, Complainant Robin Trujillo filed Accusation No. H-39499-LA in her official capacity as a Deputy Real Estate Commissioner of the State of California.
2. On November 29, 2005, the Bureau licensed Respondent VIP as a corporate real estate broker. The Bureau authorized Respondent VIP to act by and through Respondent

Verdugo as Respondent VIP's designated officer, responsible for ensuring compliance with the Real estate Law, pursuant to Business and Professions Code sections 10159.2 and 10211.

3. On October 24, 2005, the Bureau licensed Respondent Verdugo as a real estate broker.

#### *The Nolascos*

4. In August 2010, Manuel and Eva Nolasco (the Nolascos) were facing foreclosure of their home. Shortly thereafter, Javier Salas, a financial consultant from Respondent VIP, came to the Nolascos' home and explained that he saw their house on a list of homes facing foreclosure. Mr. Salas gave the Nolascos a handout indicating that Respondent VIP could provide, among other things, loan modification services. In that regard, the handout stated that Respondent VIP would negotiate directly with the bank concerning the actual terms of the mortgage, with a focus on lowering the interest, monthly payments, terms, and more. The Nolascos expressed their interest, which resulted in Mr. Salas making an appointment with them to come to the office of Respondent VIP to sign a contract.

5. On August 26, 2010, the Nolascos arrived at the office of Respondent VIP and were greeted by Maritza Verdugo (wife of Respondent Verdugo), who identified herself as a realtor and owner of Respondent VIP. Ms. Verdugo explained she would help the Nolascos with the process of saving their home. In that regard, Ms. Verdugo instructed them to sign a number of documents and stated that if they signed the documents, which the Nolascos understood to be loan modification papers, she could stop the foreclosure by modifying the loan with a different bank, which would take four to five weeks.

6. The documents consisted of, among other things, a "Homeowner Understanding and Agreement" on the letterhead of Investors Finance, Inc. (IFI), which stated that IFI was in the business of purchasing non-performing notes held by banks for specific properties. It also required the Nolascos to initial certain statements acknowledging, among other things, that IFI would not be modifying the loan, would not be monitoring the status of the default and foreclosure process, and would not guarantee that it would be successful in purchasing the primary note. Another IFI document entitled "Evaluation Payment and Refund Policy" stated IFI would charge an initial evaluation payment of \$3,000 for the first mortgage lien.

7. Respondent VIP had become authorized representatives of IFI four months prior to the Nolascos' introduction to Respondent VIP and Ms. Verdugo. Specifically, Respondent VIP was to represent IFI in connection with IFI's Home Owner Mortgage Restructuring (HOMR) program, where Respondent VIP would earn a three percent commission on each successful transaction between IFI and homeowners enrolled in HOMR by Respondent VIP. Ms. Verdugo explained that IFI would buy the Nolascos' mortgage and restructure it.

8. The Nolascos signed and initialed the documents as instructed. Additionally, they wrote a check in the amount of \$3,000 made payable to Respondent VIP. Respondent VIP deposited the \$3,000 check into its general account on or about August 27, 2010.

9. On September 20, 2010, Respondent VIP sent a \$3,000 check to IFI.

10. On October 5, 2010, IFI sent Respondent VIP a letter severing its relationship with Respondent VIP, and requested that it desist and refrain from performing any activities as an authorized representative of IFI.

11. Weeks thereafter, the Nolascos began calling Ms. Verdugo to ascertain the status of what they believed to be their loan modification. However, Ms. Verdugo refused to answer or return their calls. Consequently, the Nolascos made a trip to Respondent VIP's office to confront Ms. Verdugo and ask about their case. Ms. Verdugo told the Nolascos that she did not know anything about their case, and that they should contact IFI directly. Ms. Verdugo then gave them the telephone number to IFI.

12. The Nolascos contacted IFI that day. Mr. Nolasco, who testified at hearing, stated IFI advised them it knew nothing about their case, and refused to respond to any subsequent calls made by the Nolascos. However, Respondent Verdugo submitted evidence demonstrating that IFI sent the Nolascos a letter on November 11, 2010 stating that their lender declined to accept IFI's offer to restructure the loan, and that the Nolascos had refused to participate in IFI's short sale leaseback repurchase program as an alternative way to retain their home.

13. The Nolascos asked Ms. Verdugo to return their \$3,000. Ms. Verdugo advised them she did not have it.

14. On April 5, 2011, Mr. Nolasco filed a small claims action against Respondent VIP and IFI in the Superior Court of California, County of Los Angeles, in *Manuel Nolasco v. VIP Real Estate Loans, Inc.* (Case No. LAV 11N02319). On May 23, 2011, the court entered a judgment against Respondent VIP in the amount of \$3,000 plus costs, and dismissed the matter against IFI.

15. Ms. Verdugo told the Nolascos that she and Respondent VIP were not going to pay the judgment. Consequently, on July 7, 2011, Mr. Nolasco filed a complaint with the Bureau.

#### *Mary Verdugo's Testimony*

16. At hearing, Ms. Verdugo testified that she advised the Nolascos that she did not do loan modifications, and neither did Respondent VIP. She explained to them that Respondent VIP was an authorized representative of IFI, which would purchase their note. She also told them that IFI would not be performing any loan modification services. She denied telling them that she could stop the foreclosure process. Ms. Verdugo also testified

that the Nolascos insisted on making the check payable to Respondent VIP instead of IFI. As such, Ms. Verdugo decided to deposit the check in Respondent VIP's general account with the intention of treating it like escrow, and then arrange for Respondent VIP to issue a \$3,000 check to IFI.

### *The Audit*

17. As a result of Mr. Nolasco's complaint, the Bureau assigned Manijeh Khazrai (General Auditor III) to perform an audit examination of Respondent VIP's book and records to determine whether it had handled trust funds properly. The audit period was from January 1, 2010 to August 31, 2012.

18. As part of the audit, Ms. Khazrai interviewed Respondent Verdugo and Respondent VIP's officer manager, Erick Perez. Respondent Verdugo advised Ms. Khazrai that Respondent VIP did not maintain a trust account during the audit period. At hearing, Respondent Verdugo explained that Respondent VIP did not maintained a trust account because new laws enacted in 2011 prohibited brokers from performing loans.

19. Respondent Verdugo told Ms. Khazrai that the Nolascos would not have qualified for a loan modification because Mrs. Nolasco's income from her home daycare, funded through a government program, coupled with their disability income, were sufficient to cover their mortgage and living expenses. Consequently, the Nolascos signed the agreement with IFI to restructure their loan for a fee of \$3,000. Respondent Verdugo further advised Ms. Khazrai that the Nolascos refused to make the check payable to IFI, but rather insisted on making it payable to Respondent VIP. This prompted Respondent VIP to deposit the check into its general account, as it no longer maintained a trust account, and then send IFI a \$3,000 check written from Respondent VIP's general account.

20. Ms. Khazrai also discovered during the audit that Respondent VIP's office manager, Erick Perez, received his salesperson's license on May 5, 2005. Mr. Perez began working at Respondent VIP on June 25, 2009. The Bureau suspended Mr. Perez's license on January 20, 2012 for his failure to pay child support. On February 22, 2012, the Bureau sent Respondents Verdugo and VIP a letter advising that it suspended Mr. Perez indefinitely effective January 20, 2012.

21. Pursuant to Ms. Khazrai's request, Respondent VIP provided her with documents for examination. A review of Respondent VIP's documentation showed that Respondent VIP permitted Mr. Perez to act in the capacity of a real estate agent while he was suspended. Specifically, Mr. Perez signed, as Respondent VIP's agent, a residential purchase agreement on March 28, 2012, and loan modification requests for borrowers on May 15, 2012 and July 2, 2012. Respondent Verdugo claimed that Mr. Perez engaged in such activities without his knowledge, particularly loan modification services, and expressed at hearing that, because of his lack of awareness, he should not be held responsible for Mr. Perez' actions.

22. Ms. Khazrai also discovered that Respondent VIP performed real estate activity at an office location that was not registered as its main office as stated on its license. Specifically, Respondent VIP's main office listed on the Bureau's records was 19513 Ventura Boulevard in Tarzana, California. However, Respondent Verdugo advised Ms. Khazrai that Respondent VIP had vacated its office location at 19513 Ventura Boulevard approximately eight months prior to the audit, and now located its main office at 18432 Oxnard Street #219 in Tarzana, California. Respondent Verdugo had not notified the Bureau of the change of Respondent VIP's main office location.

23. A review of Respondent VIP's documentation also showed that during the audit period, Respondent VIP, as a domestic corporation, was not in good standing with the Secretary of State. This was because the California Franchise Tax Board had suspended the entity's powers, rights and privileges on December 1, 2009, pursuant to the provisions of the California Revenue and Taxation Code. Despite the suspension, Respondent VIP continued to conduct real estate transactions consisting of six real estate resale activities from March 12, 2010 to June 25, 2012, two loan activities on September 10, 2010 and January 4, 2011, and two loan modification activities on July 10, 2011 and July 12, 2012. Respondent Verdugo explained at hearing that he declined to maintain the corporation because the corporate name had the word "loan" in it, which was prohibited as a result of the laws barring brokers from performing loans.

24. Ms. Khazrai requested Respondent Verdugo to provide for examination the license certificates of Respondent VIP's associates. Specifically, Ms. Khazrai requested license certificates of Ana Barajas, Steve Flores, Firouz Mobarez, and Andres Umana. However, Respondent Verdugo failed to provide the license certificates. Respondent Verdugo also failed to demonstrate that Respondent VIP had broker-salesman relationship agreements with Ana Barajas, Steve Flores, Firouz Mobarez, and Mary Verdugo.

25. Based on the examination of Respondent VIP's records, Ms. Khazrai discovered Respondent VIP had been using fictitious business names without first obtaining a license bearing such names. Specifically, Respondent VIP used the names "VIP Real Estate and Loans," "VIP Real Estate Loans,"<sup>1</sup> and "VIP Real Estate," on residential listing agreements and purchase agreements.

26. Based on her findings, Ms. Khazrai concluded Respondent Verdugo failed to exercise reasonable supervision over Respondent VIP's real estate activities.

#### *Costs of Prosecution*

27. The Bureau incurred \$4,924.80 in costs for investigating this matter, and \$3,582.25 in enforcement costs, for a total of \$7,578.24 in prosecution costs. These costs, established by declarations executed under penalty of perjury, were reasonable pursuant to Business and Professions Code section 10106.

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<sup>1</sup> Without the "Inc."

28. The Bureau incurred \$4,146.39 in audit costs. These costs, established by declarations executed under penalty of perjury, were reasonable pursuant to Business and Professions Code section 10148.

## LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; *Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. Cause exists to discipline the real estate licenses of Respondents VIP and Verdugo, pursuant to Business and Professions Code sections 10145, subdivision (a)(1), and 10176, subdivision (e), and California Code of Regulations section 2832, subdivision (a), in that Respondents VIP and Verdugo failed to deposit in a trust account advanced fees belonging to IFI, but rather deposited the funds into Respondent VIP's general account, thereby commingling funds, as set forth in Factual Findings 4–8, and 18.

3. Cause exists to discipline the real estate licenses of Respondents VIP and Verdugo, pursuant to Business and Professions Code sections 10137, in that Respondents VIP and Verdugo employed and compensated Mr. Perez for performing acts for which a real estate license was required, notwithstanding the suspension of Mr. Perez' license, as set forth in Factual Findings 20 and 21.

4. Cause exists to discipline the real estate licenses of Respondents VIP and Verdugo, pursuant to Business and Professions Code sections 10162, subdivisions (a), (b), and (c), 10163, and California Code of Regulations section 2715, in that Respondents VIP and Verdugo conducted licensed activities at 1915 Ventura Boulevard in Tarzana, California, which was not registered as Respondent VIP's main address, as set forth in Factual Finding 22.

5. Cause exists to discipline the real estate licenses of Respondents VIP and Verdugo, pursuant to Business and Professions Code sections 10177, subdivision (f), and California Code of Regulations section 2742, subdivision (c), in that Respondents VIP and Verdugo continued to conduct operations despite the suspension of Respondent VIP's license by the Secretary of State as a result of the suspension imposed on it by the California Franchise Tax Board, as set forth in Factual Finding 23.

6. Cause exists to discipline the real estate licenses of Respondents VIP and Verdugo, pursuant to Business and Professions Code section 10160, and California Code of Regulations section 2753, in that Respondents VIP and Verdugo failed to retain the salesperson license certificate for Ana Barajas, Steve Flores, Firouz Mobarez, and Andres Umana, as set forth in Factual Finding 24.

7. Cause exists to discipline the real estate licenses of Respondents VIP and Verdugo, pursuant to California Code of Regulations section 2753, in that Respondents VIP and Verdugo failed to maintain signed broker salesperson agreements with salespersons Ana Barajas, Steve Flores, Firouz Mobarez, and Mary Verdugo, as set forth in Factual Finding 24.

8. Cause exists to discipline the real estate licenses of Respondents VIP and Verdugo, pursuant to Business and Professions Code section 10159.5, and California Code of Regulations section 2731, in that Respondents VIP and Verdugo used fictitious names for Respondent VIP to conduct licensed activities, without first obtaining from the Bureau a license bearing the fictitious name(s), as set forth in Factual Finding 25.

9. Cause exists to discipline the real estate license of Respondent Verdugo, pursuant to Business and Professions Code sections 10159.2, 10177, subdivision (h), and California Code of Regulations section 2731, in that Respondent Verdugo failed to exercise reasonable control and supervision over the activity of Respondent VIP's employees, particularly Mr. Perez, and failed to have a system in place to regularly monitor compliance with the Real Estate Law, as set forth in Factual Findings 4- 26.

10. Cause exists to discipline the real estate licenses of Respondents VIP and Verdugo, pursuant to Business and Professions Code section 10177, subdivision (g), in that their overall conduct constitutes negligence or incompetence, as set forth in Factual Findings 4 - 26.

11. Cause exists to discipline the real estate licenses of Respondents VIP and Verdugo, pursuant to Business and Professions Code section 10177, subdivision (g), in that their overall conduct constitutes negligence or incompetence, as well as a breach of fiduciary duty, as set forth in Factual Findings 4 - 26.

12. Cause exists to discipline the real estate license of Respondent Verdugo, pursuant to Business and Professions Code section 10177, subdivisions (d), (g), and (h), in that his overall conduct constitutes a failure on his part, as an officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of Respondent VIP, as required by Business and Professions Code section 10159.2 and California Code of Regulations section 2725, and to keep in compliance with the Real Estate Law, as set forth in Factual Findings 4 - 26.

13. The statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.) In light of the above, the license of Respondent VIP shall be revoked. With respect to Respondent Verdugo the public would be protected adequately by a restricted license, subject to terms and conditions.

## Costs

14. Under Business and Professions Code section 10106, the Bureau may request the administrative law judge to direct a licentiate found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. These reasonable costs are \$12,653.44, as set forth in Factual Finding 27.

15. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.App.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Board] may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Board, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and the Board must consider whether or not the licensee has raised a colorable defense. The Board must also consider the licensee's ability to make payment.

16. Respondents did not challenge the costs of the investigation and enforcement, and presented no evidence indicating they were unable to pay them. Respondents also did not challenge the audit costs of \$4,146.39. As such, Respondents VIP and Verdugo shall pay the Bureau its reasonable costs for investigation and enforcement in the amount of \$7,578.24, and its reasonable audit costs of \$4,146.39, for a total of \$11,724.63.

## ORDER

1. All licenses and licensing rights of Respondent VIP Real Estate Loans, Inc. under the Real Estate Law are revoked. Respondent VIP Real Estate Loans, Inc. shall pay the audit costs of \$4,146.39, investigation costs of \$4,924.80, and enforcement costs of \$3,582.25, for total costs in the amount \$11,724.63. These costs shall be paid jointly and severally with Respondent Luis J. Verdugo. (See 2G below.) Payments may be made in any installment plan approved by the Bureau.

2. All licenses and licensing rights of Respondent Luis J. Verdugo under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent Verdugo pursuant to Section 10156.5 of the Business and Professions Code if he makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent Verdugo 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:

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

B. The restricted license issued to Respondent Verdugo may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that he 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.

C. Respondent Verdugo 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 years have elapsed from the effective date of this Decision.

D. Respondent Verdugo shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he 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 Verdugo fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until he presents such evidence. The Commissioner shall afford Respondent Verdugo the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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

F. Respondent s Verdugo shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent Verdugo's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent Verdugo and periodic summaries of salient information concerning each real estate transaction in which he engaged during the period covered by the report.

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G. Respondent Verdugo shall pay the audit costs of \$4,146.39, investigation costs of \$4,924.80, and enforcement costs of \$3,582.25, for total costs in the amount \$11,724.63. These costs shall be paid jointly and severally with Respondent VIP Real Estate Loans, Inc (See 1 above). Payments may be made in any installment plan approved by the Bureau.

Date: August 11, 2016



CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings