

JUL 14 2021

DEPT. OF REAL ESTATE

By _____

1 LAURENCE D. HAVESON, Counsel (SBN 152631)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105
5 Telephone: (213) 576-6982
6 Direct: (213) 576-6854
7 Fax: (213) 576-6917
8 *Attorney for Complainant*

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-42052 LA
WEST EDGE, INC., JOSE GOMEZ)	<u>ACCUSATION</u>
UNIBE, individually and as designated)	
officer of West Edge, Inc., and)	
NORMA ANGELICA MARTINEZ,)	
Respondents.)	

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the Department of Real Estate ("Department" or "DRE") of the State of California, for cause of Accusation against WEST EDGE, INC. ("WEI"), JOSE GOMEZ UNIBE, also known as Jose Unibe ("UNIBE"), and NORMA ANGELICA MARTINEZ ("MARTINEZ"), collectively, "Respondents," is informed and alleges in his official capacity as follows:

1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a Supervising Special Investigator, makes this Accusation against Respondents.
2. All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

LICENSE HISTORY

3. Respondent WEI has been licensed by the Department as a real estate corporation, License ID 01481919, from on or about April 27, 2005 through the present, with WEI's license scheduled to expire on April 26, 2025 unless renewed. WEI is licensed through Respondent

ACCUSATION

1 UNIBE's real estate broker ("REB") license, ID 00889834, and UNIBE is the designated officer
2 ("D.O."). Based on DRE records to date, WEI maintains 20 branch offices and employs 103
3 broker associates and 931 salespersons. WEI currently maintains the following fictitious business
4 names licensed to WEI with the Department:

- 5 a. "Coldwell Banker West," active as of December 15, 2011;
- 6 b. "OB Sands Property Management," active as of November 4, 2020;
- 7 c. "SDH Processing," active as of April 27, 2012.

8 4. Respondent UNIBE has been licensed by the Department as a REB, from on or
9 about August 10, 1993 through the present, with UNIBE's license scheduled to expire on August
10 9, 2021, unless renewed. Prior to becoming a REB, UNIBE was licensed as a real estate
11 salesperson ("RES"), from June 21, 1985 through July 6, 1993. UNIBE maintains one branch
12 office and employs one salesperson under his REB license. UNIBE currently has no active
13 fictitious business names licensed with the Department.

14 5. Respondent MARTINEZ has been licensed by the Department as a RES, license ID
15 01012140, from on or about January 4, 1989 through the present, with MARTINEZ's license
16 scheduled to expire on September 16, 2023, unless renewed.

17 **BROKERAGE: WEI**

18 6. At all times mentioned, in San Diego County, California:

19 a. WEI and UNIBE engaged in the performance of activities requiring a real
20 estate license pursuant to Code section 10130, and acted and ordered, caused, authorized or
21 participated in licensed activities within the meaning Code section 10131.

22 b. WEI acted as a real estate broker, conducting licensed activities within the
23 meaning of Code section 10131(a): selling and buying real property for others.

24 c. WEI was acting by and through UNIBE as its D.O. pursuant to Code
25 section 10159.2, and UNIBE was thus responsible for ensuring compliance with the Real
26 Estate Law.

27 ///

28 ///

FACTS DISCOVERED BY DRE

7. On or about November 13, 2020, the DRE received a complaint from R.T.¹¹ against MARTINEZ alleging that MARTINEZ was the sellers' agent for a residential property located at 1207 Josselyn Avenue, #100, Chula Vista, California ("Josselyn property"), and that MARTINEZ published a Multiple Listing Service ("MLS") listing for the property containing a misrepresentation stating that, "Permitted ADU/ Granny flat to help with mortgage payment"—indicating that the unit could be rented as a residential unit—when in fact the unit is not a permitted ADU (accessory dwelling unit)/Granny flat. R.T. alleged that the unit is permitted as a game room with a bathroom, and not as a living quarter and cannot help with mortgage payment, and that in order to add a kitchen, the unit must be permitted as an ADU.

8. By written agreement dated May 15, 2017, MARTINEZ and WEI entered into an Independent Contractor Agreement, signed by MARTINEZ as "Associate-Licensee," and UNIBE on behalf of WEI, doing business as Coldwell Banker West, as "Broker," which agreement was in force at the time of the listing and sale of the Josselyn property. The Independent Contractor Agreement contains the following provisions, in relevant part:

4. LICENSED ACTIVITY:

A. All listings of property, and all agreements, acts or actions for performance of licensed acts, which are taken or performed in connection with this Agreement, shall be taken and performed in the name of Broker. Associate-Licensee agrees to and does hereby contribute all right and title to such listings to Broker for the benefit and use of Broker, Associate-Licensee, and other licensees associated with Broker.

6. SUPERVISION: Associate-Licensee, within 24 hours (or 2 days) after preparing, signing, or receiving same, shall submit to Broker, or Broker's designated licensee: (I) all documents which may have a material effect upon the rights and duties of principals in a transaction.

9. On or about June 18, 2020, MARTINEZ, on behalf of WEI, entered into a Residential Listing Agreement with M.G. and T.G., the sellers of the Josselyn property.

10. On or about June 25, 2020, MARTINEZ caused a MLS listing for the property to be published through the California Regional Multiple Listing Service ("CRMLS") and or San

¹¹Initials are used in place of an individual's full name to protect their privacy. Documents containing the individuals' full names will be provided during the discovery phase of this case to Respondents and/or their attorney(s), after service of a timely and proper request for discovery on Complainant's counsel.

1 Diego Multiple Listing Service ("SDMLS"), which included within the property description,
2 "Permitted ADU/Granny flat to help with mortgage payment." The MLS listing was available
3 online, and had an included "tab" section with the permits issued for the Josselyn property. A
4 permit available to be viewed in the MLS listing showed "New Residential Construction"
5 described as a "Game Room/Bath Bldg." This was for a detached unit built on the same property
6 as the house, which was described in the MLS listing as the "Permitted ADU/Granny flat."

7 11. On or about July 30, 2020, R.T. and her husband L.T., in reliance, in part, on the
8 MLS listing description that stated "Permitted ADU/Granny flat to help with mortgage payment,"
9 entered into a Residential Purchase Agreement for the purchase of the Josselyn property. Escrow
10 closed on the property on September 15, 2020.

11 12. After R.T. and L.T. and the sellers of the Josselyn property agreed to the sale, but
12 before the close of escrow, R.T. made several requests through her real estate agent for the permits
13 for the property, and R.T.'s agent was repeatedly told would be produced. Closer to the close of
14 escrow R.T. went onto a website for the City of Chula Vista and saw that the separate unit on the
15 Josselyn property was permitted as a "game room." It was not clear to R.T. that this was not a
16 permitted ADU. R.T. also made efforts to contact the City of Chula Vista for further information,
17 but a response was delayed because of the Covid-19 pandemic.

18 13. According to information provided to the DRE by the City of Chula Vista's
19 Development Services in February 2021: an ADU has some sort of kitchen and is a separate unit
20 from the house; a game room is part of a house, is not a separate unit, and has no cooking
21 facilities; it is not legal for a property owner to rent a game room as a separate unit.

22 **VIOLATIONS OF THE REAL ESTATE LAW – CAUSES FOR DISCIPLINE**

23 14. In the course of the activities described above in Paragraph 6, and based on the
24 facts discovered by the DRE, as described above in Paragraphs 7 through 13, Respondents acted in
25 violation of the Code and Regulations as follows.

26 ///

27 ///

28 ///

1 FIRST CAUSE OF ACCUSATION

2 15. The Complainant realleges and incorporates by reference all of the allegations
3 contained in paragraphs 1 through 14 above with the same force and effect as though fully set
4 forth herein.

5 16. MARTINEZ's acts and/or omissions in listing the Josselyn property as including a
6 "Permitted ADU/Granny flat," when in fact the unit was not a permitted ADU/Granny flat, and the
7 unit could not be rented as a residential unit, were in violation of Code sections 10176(a) and/or
8 10177(g) and constitute cause to suspend or revoke the real estate licenses and license rights of
9 Respondent MARTINEZ pursuant to Code sections 10176(a) and/or 10177(g).

10 SECOND CAUSE OF ACCUSATION

11 17. The Complainant realleges and incorporates by reference all of the allegations
12 contained in paragraphs 1 through 16 above with the same force and effect as though fully set
13 forth herein.

14 18. WEI's acts and/or omissions in failing to insure that the listing for the Josselyn
15 property did not include the material inaccurate statement that the property included a "Permitted
16 ADU/Granny flat to help with mortgage payment," were in violation of Code section 10177(g)
17 and Regulation 2725 and constitute cause to suspend or revoke the real estate licenses and license
18 rights of Respondent WEI pursuant to Code section 10177(g).

19 THIRD CAUSE OF ACCUSATION

20 19. The Complainant realleges and incorporates by reference all of the allegations
21 contained in paragraphs 1 through 18 above with the same force and effect as though fully set
22 forth herein.

23 20. UNIBE's acts and/or omissions, as alleged above in paragraphs 6, 7 through 12,
24 and in the First and Second Causes of Accusation, are in violation of Code sections 10159.2,
25 10177(g), and 10177(h), and Regulation 2725, and constitute cause to suspend or revoke the real
26 estate licenses and license rights of Respondent UNIBE pursuant to Code sections 10177(h) and
27 10177(g).

28 ///

1 COSTS

2 (INVESTIGATION AND ENFORCEMENT COSTS)

3 21. Code section 10106 provides, in pertinent part that in any order issued in
4 resolution of a disciplinary proceeding before the DRE, the Commissioner may request the
5 administrative law judge to direct a licensee found to have committed a violation of this part to
6 pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

7 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
8 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
9 against all the licenses and license rights of Respondents WEST EDGE, INC., JOSE GOMEZ
10 UNIBE, and NORMA ANGELICA MARTINEZ under the Real Estate Law, for the costs of
11 investigation and enforcement as permitted by law, and for such other and further relief as may be
12 proper under other applicable provisions of law.

13
14 Dated at San Diego, California this 12 day of July, 2021.

15
16
17 *Veronica Kilpatrick*

18 Veronica Kilpatrick
19 Special Investigator

20 cc: WEST EDGE, INC.
21 JOSE GOMEZ UNIBE
22 NORMA ANGELICA MARTINEZ
23 Veronica Kilpatrick
24 Sacto.
25
26
27
28