

FRG

1 JASON D. LAZARK, Counsel (SBN 263714)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Office: (916) 227-0789
6 Direct: (916) 227-0822

FILED
JUL 11 2011
DEPARTMENT OF REAL ESTATE
By L. Just

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 JOEL PRADO VALENCIA, and) No. H-10999 SF
13 ARLEEN CONNORS-DURAN,) FIRST AMENDED
14 Respondents.) ACCUSATION

15 The Complainant, E.J. HABERER, II, acting in his official capacity as a Deputy
16 Real Estate Commissioner of the State of California, for cause of the First Amended Accusation
17 against JOEL PRADO VALENCIA and ARLEEN CONNORS-DURAN, (collectively referred
18 to herein as "Respondents"), is informed and alleges as follows:

19 GENERAL ALLEGATIONS

20 1.

21 At all times herein mentioned, Respondent JOEL PRADO VALENCIA
22 (hereinafter "Respondent VALENCIA") was and now is licensed by the State of California
23 Department of Real Estate (hereinafter "the Department") as a real estate broker.

24 ///
25 ///
26 ///
27

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

2.

At all times herein mentioned, Respondent ARLEEN CONNORS-DURAN (hereinafter "Respondent CONNORS-DURAN") was and now is licensed in the employ of Valence Corporation and is licensed by the Department as a real estate salesperson.

3.

At all times herein mentioned, Complainant KENNETH K. SHELLITO (hereinafter "Complainant") was and now is licensed by the State of California Department of Real Estate (hereinafter "the Department") as a real estate broker.

4.

At all times herein mentioned, Respondents and Complainant engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of section 10131(a) of the Business and Professions Code (hereinafter "the Code"), including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property.

5.

Prior to April 21, 2008, Respondent CONNORS-DURAN presented an offer from a party unrelated to this case to the lender for approximately \$675,000 (hereinafter "Previous Offer").

6.

On or about April 21, 2008, Complainant submitted a full price offer of \$1,075,000 on behalf of his client to the seller's agent, Respondent CONNORS-DURAN, to purchase via a short sale the real property located at 855 Canada Rd. Woodside, California (hereinafter "the Subject Property"). At the time, the commission rate for the buyer's agent was

///

1 advertised on the Multiple Listing Service (MLS) as two percent (2%). This full price offer was
2 not submitted to the lender by Respondent CONNORS-DURAN at the time.

3 7.

4 On May 21, 2008, Respondent CONNORS-DURAN received from the lender a
5 counter-offer to the Previous Offer indicating that they would only pay a total three percent
6 (3%) commission for the counter-offered purchase price of \$1,034,900.

7 8.

8 On May 27, 2008, Respondents changed the commission rate for the buyer's
9 agent advertised on the MLS to one and one half percent (1.5%). Also on May 27, 2008,
10 Respondent CONNORS-DURAN sent a letter to lender's representative, Julie Gates, seeking
11 confirmation that the bank would pay a seven percent (7%) commission if Respondent
12 CONNORS-DURAN was able to obtain an offer above the lender's counter-offer of
13 approximately \$1,035,000.

14 9.

15 On or about May 28, 2008, Respondent CONNORS-DURAN contacted
16 Complainant and asked him if his client was still interested in the property. Respondent
17 CONNORS-DURAN notified the Complainant that the lender would only agree to a three
18 percent (3%) total commission and asked Complainant if he would agree to a one and one half
19 percent (1.5%) commission due to this change. When Complainant responded "yes",
20 Respondent CONNORS-DURAN submitted the offer originally submitted by Complainant on
21 May 21, 2008. This offer included an amendment to the brokerage fee section of the contract
22 indicating that Complainant was willing to accept a one and one half percent (1.5%)
23 commission on the transaction.

24 10.

25 On or about May 29, 2008, and continuing thereafter, Respondent CONNORS-
26 DURAN sent several emails to Julie Gates seeking confirmation that the bank would pay a six
27 percent (6%) total commission regarding the purchase and sale of the Subject Property.

1 11.

2 Sometime between June 1, 2008, and July 14, 2008, Respondents agreed to
3 change the notification on MLS to state that the buyer's agent is to receive a one and one half
4 percent (1.5%) commission even if the lender agrees to a higher commission rate than three
5 percent (3%). Respondents then changed the MLS notes regarding the Subject Property to read,
6 "[i]f Lender (sic) approves higher commission, only 1.5% pd to Selling Agent." Neither
7 Respondent CONNORS-DURAN nor Respondent VALENCIA contacted Complainant and
8 notified him of their decision to only pay Complainant one and one half percent (1.5%)
9 commission regardless of the lender's decision nor of Respondents' decision to change the
10 notification on MLS.

11 12.

12 On or about June 19, 2008, Respondents received a two page letter from the
13 lender indicating the lender would pay a six percent (6%) total commission for the purchase and
14 sale of the Subject Property. Neither Respondent CONNORS-DURAN nor Respondent
15 VALENCIA notified Complainant that the lender approved the higher commission percentage.

16 13.

17 On or about June 22, 2008, Respondents sent Complainant a copy of the June 19,
18 2008 letter from the lender. However, Respondents deleted or failed to include that portion of
19 the letter indicating that the lender agreed to pay a six percent (6%) total commission for the
20 transaction.

21 14.

22 On or about July 11, 2008, the escrow closed on the subject property. Also on
23 that date, Respondents submitted a Seller's Final Closing Statement showing the commission
24 division to be one and one half percent (1.5%) to Complainant and four and one half percent
25 (4.5%) to Respondents.

26 ///

27 ///

1 15.

2 On or about July 11, 2008, Complainant reviewed the final closing statement and
3 noticed the one and one half percent (1.5%)/four and a half percent (4.5%) commission
4 division. As a result, on July 11, 2008, Complainant left a voice mail message for Respondent
5 VALENCIA indicating that there was a problem with the commission division regarding the
6 sale of the Subject Property. On or about August 1, 2008, Complainant received a call back
7 from Respondent VALENCIA who stated that Respondent CONNORS-DURAN believed that
8 Complainant was not entitled any commission above one and one half percent (1.5%).

9 16.

10 At every stage of the proceedings that followed the closing of the Subject
11 Property, Respondents continued to represent to Complainant that he was not entitled to any
12 increased commission.

13
14 **FIRST CAUSE OF ACTION**
(Fraudulent and/or Dishonest Dealings as to both Respondents)

15 17.

16 Each and every allegation contained above in Paragraphs 1 through 16, inclusive,
17 is incorporated by this reference as if fully set forth herein.

18 18.

19 As set out above in Paragraphs 5 through 16, Respondents' representations
20 and/or actions were substantially fraudulent, misleading, dishonest and deceitful and were
21 known by Respondents to be substantially fraudulent, misleading, dishonest and deceitful
22 during the transaction of the Subject Property.

23 19.

24 The acts and or omission of Respondents, as alleged above in Paragraphs 17 and
25 18 constitute grounds for the revocation or suspension of Respondents' licenses and or license
26 rights under section .10176(i) of the Code.

27 ///

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

SECOND CAUSE OF ACTION
(Failure to Supervise as to Respondent VALENCIA)

20.

Each and every allegation contained above in Paragraphs 1 through 19, inclusive, is incorporated by this reference as if fully set forth herein.


21.

At all times mentioned herein above, Respondent VALENCIA failed to exercise reasonable supervision over the activities of Respondent CONNORS-DURAN, and permitted, ratified and/or caused the conduct described above. Respondent VALENCIA failed to reasonably or adequately review, oversee, inspect and manage the associated brokers and salespersons under his employ, and/or to establish reasonable policies, rules, procedures and systems for such review, oversight, inspection and management.

22.

Respondent VALENCIA'S failure to supervise as described in Paragraphs 20 and 21, above, is grounds for discipline under section 10177(h) of the Code and section 2725 of the Regulations.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law, and for such other and further relief as may be proper under the provisions of law.



E.J. HABERER, II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 7th day of July, 2011.

1 JASON D. LAZARK, Counsel (SBN 263714)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Office: (916) 227-0789
6 Direct: (916) 227-0822

FILED
SEP 13 2010
DEPARTMENT OF REAL ESTATE
By L. Frost

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) No. H-10999 SF
13 JOEL PRADO VALENCIA, and)
14 ARLEEN CONNORS-DURAN,) ACCUSATION
15 Respondents.)

16 The Complainant, E.J. HABERER, II, acting in his official capacity as a Deputy
17 Real Estate Commissioner of the State of California, for cause of Accusation against JOEL
18 PRADO VALENCIA and ARLEEN CONNORS-DURAN, (collectively referred to herein as
19 "Respondents"), is informed and alleges as follows:

20 1.

21 At all times herein mentioned, Respondent JOEL PRADO VALENCIA was and
22 now is licensed by the State of California Department of Real Estate (herein "the Department")
23 as a real estate broker.

24 2.

25 At all times herein mentioned, Respondent ARLEEN CONNORS-DURAN was
26 licensed in the employ of Respondent JOEL PRADO VALENCIA and is licensed by the
27 Department as a real estate salesperson.

1 3.

2 At all times herein mentioned, Respondents engaged in the business of, acted in
3 the capacity of, advertised, or assumed to act as real estate brokers within the State of California
4 within the meaning of Section 10131(a) of the Business and Professions Code (herein "the
5 Code"), including the operation and conduct of a real estate resale brokerage with the public
6 wherein, on behalf of others, for compensation or in expectation of compensation, Respondents
7 sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers
8 of, solicited and obtained listings of, and negotiated the purchase and resale of real property.

9 4.

10 On or about May 7, 2009, Plaintiff Kenneth K. Shellito (herein "Mr. Shellito")
11 brought a suit against Respondents in the Superior Court of the State of California, County of
12 Santa Clara, Small Claims Division, Case Number 709SC034314, to recover damages for an
13 additional .5 percent real estate commission owed to him and for legal fees associated with
14 bringing the suit. On or about July 10, 2009, in the above case, the court entered a notice of
15 entry of judgment upon Respondents, jointly and severely, requiring Respondents to pay Mr.
16 Shellito \$5,375 in principal and \$95.00 in costs. Respondents thereafter appealed the judgment
17 against them. On or about September 25, 2009, following the trial de novo appealing the entry
18 of judgment, the judge affirmed the entry of judgment upon Respondents. On or about
19 February 11, 2010, Mr. Shellito requested the court to provide a detailed explanation for the
20 September 25, 2009 decision. On or about March 1, 2010, the court granted Mr. Shellito's
21 request for a detailed explanation and provided a four paragraph explanation for the judgment.
22 In the explanation the court found, among other things, that "Defendants/Appellants committed
23 a fraud upon Plaintiff/Respondent. He [Mr. Shellito] is a victim of their misrepresentation and
24 deceit." (clarification added).

25 ///

26 ///

27 ///

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

5.

The acts and or omission of Respondents, as alleged above in paragraph 4, constitute grounds for the revocation or suspension of Respondents' licenses and or license rights under Sections 10176(i) and 10177.5 of the Code:

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law, and for such other and further relief as may be proper under the provisions of law.

E.J. HABERER, II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this _____ day of _____, 2010.