

FILED

MAR 26 2013

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By K. Contreras

In the Matter of the Accusation of)
)
 DAVID KUMAR LAL, and)
 DAVID EDGARDO REYES MELENDEZ,)
)
 Respondents.)
 _____)

NO. H-11350 SF
(As to DAVID KUMAR LAL Only)

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on March 7, 2013. The Findings of Fact set forth herein are based on one or more of the following: (1) Respondent DAVID KUMAR LAL s (“Respondent”) express admissions; (2) affidavits; and/or, (3) other evidence.

This Decision revokes a real estate license based on misrepresentation, false promises, commingling, fraud or dishonest dealing, and the unlawful collection and use of advance fees.

The right to reinstatement of a revoked real estate license is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner’s Criteria of Rehabilitation are attached hereto for the information of Respondent.

FINDINGS OF FACT

1

On November 21, 2012, ROBIN S. TANNER made the First Amended Accusation (herein the “Accusation”) in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and form for the Notice of Defense were mailed, by certified and regular mail to Respondent at his last known mailing address on file with the Department of Real Estate (herein the “Department”) on November 21, 2012.

On March 7, 2013, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2

At all times herein mentioned, Respondent was licensed and/or had license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

3

At all times herein mentioned, Respondent was licensed by the Department as a real estate broker.

4

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California on behalf of others, for compensation or in expectation of compensation within the meaning of:

- a) Section 10131(a) of the Code, including the operation and conduct of a residential resale brokerage wherein Respondent sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity; and,
- b) Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage wherein Respondent solicited borrowers or lenders for or negotiated loans or collect payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

5

Respondent did not maintain a trust account.

6

Between about July 29, 2010 and October 22, 2010, Respondent LAL dba Fantastic Real Estate entered into advance fee agreements and claimed, demanded, charged and collected advance fees from the borrowers shown below prior to submission to the Department of any or all materials used to collect said advanced fees; failed to deposit said advance fees into a trust account with a bank or other recognized depository; failed to provide a quarterly accounting to the borrowers of said advanced fees; and represented to the borrowers that the advance fees would be used to list their property in order to short-sell their homes or would be used as the down payment on a new home; when in fact Respondent used said advance fees for his own purposes, in violation of Sections 10176(a) (substantial misrepresentation), (b) (false promise), (e) (commingling), and (i) (fraud or dishonest dealing), 10085 (advance fee materials), 10085.5 (collecting advance fees), and 10146 (advance fee trust account) of the Code, and Sections 2970

(advance fee materials) and 2972 (quarterly accounting of advance fees collected), Chapter 6, Title 10, California Code of Regulations (herein "the Regulations"):

<u>Borrower</u>	<u>Property Address</u>	<u>Advance Fee</u>	<u>Date</u>
Martin G.	Sunatra Ave San Jose, CA	\$5,000	7/29/10
Isalia G.	Downer Ave. Richmond, CA	\$5,000	7/23/10
		\$1,500	8/28/10
		\$1,500	9/22/10
		\$1,500	10/22/10

DETERMINATION OF ISSUES

1

The facts found above constitute cause under Sections 10176(a), (b), (e), and (i), 10085, 10085.5, and 10146 of the Code, and Sections 2970 and 2972 of the Regulations, in conjunction with Section 10177(d) of the Code to revoke the license and license rights of LAL under the Real Estate Law.

2

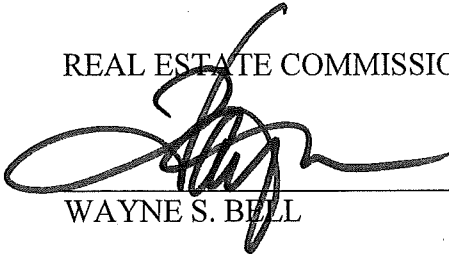
The standard of proof applied is clear and convincing proof to a reasonable certainty.

ORDER

The real estate license and license rights of Respondent DAVID KUMAR LAL under the provisions of Part I of Division 4 of the Business and Professions Code are hereby revoked.

This Decision shall become effective at 12 o'clock noon on APR 15 2013.

DATED: 3/25/2013

REAL ESTATE COMMISSIONER

WAYNE S. BELL

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

MAR -7 2013

DEPARTMENT OF REAL ESTATE

By: *K. Contreras*

8 **BEFORE THE DEPARTMENT OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 ***

11 In the Matter of the Accusation of)
12)
13 DAVID KUMAR LAL, and,)
14 DAVID EDGARDO REYES MELENEZ,)
15 Respondent.)

NO. H-11350 SF

DEFAULT ORDER
(As to DAVID KUMAR LAL, Only)

16
17 Respondent, DAVID KUMAR LAL, only, having failed to file a Notice of
18 Defense within the time required by Section 11506 of the Government Code, is now in default.
19 It is, therefore, ordered that a default be entered on the record in this matter.

20 IT IS SO ORDERED March 7, 2013.

21 Real Estate Commissioner

22
23 By: *Joseph M. Carrillo*
24 JOSEPH M. CARRILLO
25 Regional Manager
26
27

FILED

MAR 25 2013

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By B. Contreras

In the Matter of the Accusation of)
)
 DAVID KUMAR LAL, and)
 DAVID EDGARDO REYES MELENDEZ,)
)
 Respondent.)
 _____)

NO. H-11350 SF

OAH NO. 2012070254
(As to DAVID EDGARDO
REYES MELENDEZ, Only)

DECISION

The Proposed Decision dated February 21, 2013, of the Administrative Law Judge of the Office of Administrative Hearings as to Respondent David Edgardo Reyes Melendez only, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.


This Decision shall become effective at 12 o'clock noon on

APR 15 2013

IT IS SO ORDERED

3/21/2013

REAL ESTATE COMMISSIONER



WAYNE S. BELL

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAVID KUMAR LAL, and
DAVID EDGARDO REYES MELENDEZ,

Respondents.

Case No -11350 SF

OAH No. 2012070254

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, Office of Administrative Hearings, State of California, heard this matter on January 15 and 16, 2013, in Oakland, California.

Mary F. Clarke, Counsel, Department of Real Estate, represented Complainant Robin S. Tanner, Deputy Real Estate Commissioner.

Respondent David Edgardo Reyes Melendez was present and represented himself.

Respondent David Kumar Lal did not file a Notice of Defense and is therefore not a respondent in this matter.

The record was closed and the matter was submitted for decision on January 16, 2013.

SUMMARY

This matter involves the collection of advance fees by a company called Mortgage Relief Assistance Group for services provided by David Edgardo Reyes Melendez in connection with consumer mortgage modifications.

FACTUAL FINDINGS

1. Complainant Robin S. Tanner filed the Accusation in her official capacity as a Deputy Real Estate Commissioner for the Department of Real Estate, State of California (Department).

2. David Edgardo Reyes Melendez (Respondent) is licensed under the Real Estate Law as a real estate salesperson. His salesperson license is scheduled to expire on February 7, 2014.

3. Respondent provided mortgage modification services through a company called Mortgage Relief Assistance Group (MRAG). MRAG's Articles of Incorporation were filed with the California Secretary of State on November 12, 2008 and indicate Respondent was one of the initial directors. A Statement of Information was filed with the Secretary of State on October 9, 2009, that stated Respondent was MRAG's chief executive officer and Alejandrina Renteria was its chief financial officer. The evidence was Respondent in fact acted as MRAG's chief executive officer.

4. A corporate entity that receives compensation for negotiating a mortgage modification must be licensed by the Department and supervised by a real estate broker. Between June and December 2009, MRAG received compensation for providing loan modification services, but it did not have a real estate license and was not supervised by a real estate broker.

5. Respondent, as MRAG's chief executive officer, provided mortgage modification services to consumer clients. Between October 2008 and April 2010, Respondent was not licensed as a real estate broker and was not supervised by a real estate broker.

6. Respondent transacted all of his services in the name of MRAG, but did not file a fictitious business name for MRAG.

7. Prior to MRAG or Respondent performing any loan modification services, consumers were asked to sign an advance fee agreement with MRAG, which was entitled Loan Assistance & Disclosure Agreement (Agreement), or an agreement called Retainer Agreement for Legal Consultation, Research and Analysis (Retainer Agreement). Both documents called for consumers to make three installment payments of \$1,300 to MRAG prior to the time mortgage assistance services were provided.

8. In July 2009, Martin Gutierrez and Maribel Rodrique entered into the form Agreement with MRAG, pursuant to which they paid MRAG \$1,300 on July 29, 2009, for mortgage modification services. Guitierrez and Rodrique did not receive a loan modification, and when they requested Respondent to return the money they paid for loan modification services, he did not do so.

9. In December 2009, Abram Navarro entered into a form Retainer Agreement with MRAG and paid \$2,000 in cash for loan modification services. He hoped that Respondent could assist him in avoiding foreclosure on his home at 1689 Fallbrook Avenue, San Jose. Navarro agreed to pay an additional \$1,500 to Respondent when the loan modification was complete. Respondent was initially successful in helping Navarro to avoid the foreclosure, but the procedure ultimately went forward. Respondent then recommended

that Navarro declare bankruptcy. On March 17, 2011, Respondent presented a short sale buyer to Navarro, but Navarro did not agree to the sale. Navarro did not receive a loan modification.

10. Complainant alleged that while providing loan modification services to Navarro, Respondent represented himself to be an attorney. The evidence of this conduct was contained in a letter from Community Legal Services to the Department. This hearsay evidence by itself is not adequate to support a finding that this misrepresentation occurred.

11. In July 2009, Alicia Garcia signed the Agreement and made an initial payment to MRAG in the amount of \$1,300 for loan modification services with respect to a loan secured by a house in East Palo Alto. She requested MRAG not to cash the check, as she did not have sufficient funds in her account to cover it, but the check was nonetheless cashed. Garcia sought, with the help of Community Legal Services in East Palo Alto, to rescind the Agreement and obtain a refund. Garcia met with Respondent, who treated her rudely and refused to refund the amount paid. Garcia did not receive a loan modification.

12. None of the advance fee contracts utilized in the transactions with these three consumers, or with any other consumers, were submitted to the Department for review prior to the transactions.

13. The advance fees collected by MRAG were deposited directly into MRAG's general business account at Bank of America. The name on the account was: "Alexandra Renteria Sole Prop, DBA Mortgage Relief Assistance Group." Alexandra Renteria was designated MRAG's chief financial officer and had check writing authority for MRAG. The fees were not deposited into a trust account.

14. Between June 30, 2009, and December 31, 2009, approximately \$324,000 was paid to MRAG by over 100 consumers for loan modification services. Of this amount, Respondent received checks from MRAG for commissions in the amount of \$6,000 on October 5, 2009 and November 2, 2009; \$5,000 on July 7, 2009; and \$8,900 on August 28, 2009. He also received payments for various other purposes.

15. The Department has incurred investigation and prosecution costs in the amount of \$13,021.91. These costs are reasonable.

Respondent's Evidence

16. Respondent chose not to testify and was not called as a witness by the Department.

LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence.

2. Pursuant to Business and Professions Code section 10177, subdivision (d), the Commissioner may suspend or revoke a real estate license if the licensee has “willfully disregarded or violated the Real Estate Law or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law.”

Unlicensed Activities

3. Business and Professions Code section 10130 makes it unlawful for any person to engage in the business of, or act in the capacity of, a real estate licensee without being licensed. Business and Professions Code section 10131, subdivision (d), requires a real estate broker’s license to negotiate loans or perform services for borrowers in connection with loans secured by real property.

As set forth in Findings 4 and 5, Respondent conducted loan modification services without broker supervision, and MRAG neither possessed a license under section 10130 nor was it supervised by a real estate broker. At all times relevant to these proceedings, Respondent conducted his loan modification business through MRAG. In so doing, Respondent willfully violated Business and Professions Code sections 10130. Cause therefore exists to suspend or revoke Respondent’s license pursuant to Business and Professions Code section 10177, subdivision (d).

4. Pursuant to Business and Professions Code section 10131.2, a real estate broker’s license is required to collect advance fees for loan modification services. As set forth in Findings 7–9, and 11, Respondent collected advance fees for these services, when he was not supervised by a broker. In so doing, Respondent willfully violated Business and Professions Code sections 10131.2, subdivision (d). Cause therefore exists to suspend or revoke Respondent’s license pursuant to Business and Professions Code section 10177, subdivision (d).

5. Business and Professions Code section 10139 prohibits any person from acting as a real estate broker or loan originator without a license. As set forth in Findings 5 and 14, Respondent acted as a broker without broker’s license and accepted commissions for providing loan modification services without broker supervision. In so doing Respondent willfully violated Business and Professions Code section 10139. Cause therefore exists to suspend or revoke Respondent’s license pursuant to Business and Professions Code section 10177, subdivision (d).

Advance Fees

6. Pursuant to Business and Professions Code section 10085, and California Code of Regulations title 10, section 2970, materials used in obtaining an advance fee must be submitted to the Commissioner for approval prior to use. As set forth in Finding 12, Respondent willfully violated these provisions in that he failed to submit the advance fee Agreement to the Department prior to its use with the three consumers. In so doing, Respondent willfully violated Business and Professions Code section 10085 and California Code of Regulations title 10, section 2970. Cause therefore exists to suspend or revoke Respondent's license pursuant to Business and Professions Code section 10177, subdivision (d).

7. Pursuant to Business and Professions Code section 10085.5, it is unlawful for any person to collect an advance fee from a borrower for performing services in connection with a loan before the borrower becomes obligated to complete the loan. As set forth in Findings 7-9, and 11, Respondent violated this provision in that he collected fees for loan modifications before the borrower became obligated to complete the modified loan. In so doing Respondent willfully violated Business and Professions Code section 10085.5. Cause therefore exists to suspend or revoke Respondent's license and licensing rights pursuant to Business and Professions Code section 10177, subdivision (d).

8. Pursuant to Business and Professions Code section 10085.6, effective October 11, 2009, it is unlawful for a licensee to collect any fee on behalf of a borrower for performing services in connection with a loan until the licensee has fully performed the service the licensee has contracted to perform. As set forth in Findings 7 and 9, Respondent violated this provision when he collected fees for loan modifications before the work was completed. In so doing Respondent willfully violated Business and Professions Code section 10085.6. Cause therefore exists to suspend or revoke Respondent's license pursuant to Business and Professions Code section 10177, subdivision (d).

Trust Accounts

9. Pursuant to Business and Professions Code section 10146, and California Code of Regulations title 10, section 2972, any advance fee collected must be deposited in a neutral escrow depository or trust fund account. As set forth in Finding 13, Respondent violated these provisions in that he deposited advance fees into a general business account. In so doing Respondent willfully violated Business and Professions Code section 10146, and California Code of Regulations title 10, section 2972. Cause therefore exists to suspend or revoke Respondent's license pursuant to Business and Professions Code section 10177, subdivision (d).

Fictitious Business Name

10. Pursuant to Business and Professions Code section 10159.5, and California Code of Regulations title 10, section 2731, a licensee shall not use a fictitious name in the

conduct of business, unless the licensee's license bears the fictitious business name; and the fictitious name is on file with the appropriate county clerk. As set forth in Finding 6, Respondent violated this provision when he performed licensed services using the MRAG name, but failed to file MRAG as a fictitious name. In so doing Respondent willfully violated Business and Professions Code section 10159.5 and California Code of Regulations title 10, section 2731. Cause therefore exists to suspend or revoke the Respondent's license pursuant to Business and Professions Code section 10177, subdivision (d).

Misrepresentation and Dishonest Dealing

11. Business and Professions Code section 10176, subdivision (a) and (i) prohibit the making of any substantial misrepresentation. The Department alleged Respondent represented to Abron Navarro that Respondent was an attorney. Pursuant to Finding 10, this allegation was not proven.

Discipline Determination

12. Respondent's failure to testify or call witnesses means there is no evidence to rebut the allegations in the Accusation. Respondent presented only unsworn opening and closing statements in which he asserted that he violated no law; that if there were any legal violations, they were the result of misconduct by other employees of MORAG, and that pursuant to the form Agreement signed by customers, the money paid to MORAG was for legal services. In the absence of any evidence in mitigation, extenuation or rehabilitation, the only appropriate discipline in this matter is license revocation.

Fees for Investigation and Prosecution

13. Business and Professions Code section 10106 provides that:

in a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

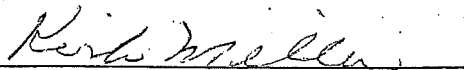
Respondent shall pay the Department's reasonable costs of investigation and enforcement in the amount of \$13,021.91.

ORDER

1. Respondent David Edgardo Reyes Melendez Real Estate sales person license is revoked.

2. Respondent shall pay \$13,021.91 to the Department for the costs incurred in investigating and prosecuting this case.

DATED: February 21, 2013


KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings