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FILED

OCT 17 2013

BUREAU OF REAL ESTATE

By Norma Dennis

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	BRE No. H-38335 LA
)	OAH No. 2012100173
VICTOR CHAVEZ and)	
KULDEEP SANADHYA)	
)	
)	
Respondent(s).)	
_____)	

DECISION

The Proposed Decision dated August 27, 2013, 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.

Pursuant to Section 11517 (c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

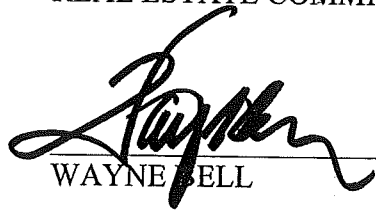
Legal Conclusions, Page 11, Line 2 "subdivisions (d) or (g)" is corrected to read "subdivisions (d) and (g)."

Legal Conclusions, Page 12, Paragraph 5, Line 2, "Code section 10159" is corrected to read "Code section 10159.5."

This Decision shall become effective at 12 o'clock noon on
NOV 06 2013

IT IS SO ORDERED 10/1/2013

REAL ESTATE COMMISSIONER



WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

VICTOR CHAVEZ and KULDEEP
SANADHYA,

Respondents.

Case No. H-38335 LA

OAH No. 2012100173

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on July 16 and 17, 2013, in Los Angeles, California.

Lisette Garcia, Counsel for the Bureau of Real Estate (Bureau),¹ appeared on behalf of complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California.

Marisol Ocampo, Attorney at Law, of Century Law Group, represented respondents Victor Chavez (Chavez) and Kuldeep Sanadhya (Sanadhya), who were present.

At the hearing, complainant moved for leave to amend the Accusation to change “Ibanet” to “Inbanet” at paragraph 7, lines 22, 24, and 26; paragraph 9, line 16; paragraph 10, line 28; and paragraph 21, line 5. There was no objection. The motion was granted and the Accusation was deemed amended. At the hearing, complainant moved that Exhibit 8 be admitted into evidence; respondents objected to portions of that exhibit on grounds of hearsay. The motion was taken under submission. Exhibit 8 is admitted, in part; pages 5 through 8 and 16 through 35 are not admitted. The grounds for excluding pages 5 through 8 are set forth at Factual Finding 22, footnote 6, *post*. The “Attorney Synopsis” at pages 16 through 35 is not admitted because it does not satisfy the requirements of Government Code 11513, subdivision (d), and is not otherwise admissible.

Oral and documentary evidence was received, the record was closed, and the matter was submitted on July 17, 2013.

¹ Prior to July 1, 2013, the Bureau was known as the Department of Real Estate. References herein to actions taken by the Bureau may signify actions taken by the Department.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant filed the Accusation, and a Supplemental Accusation adding a Fifth Cause for Discipline, in her official capacity. Respondents timely filed a notice of defense.

2. The Bureau issued real estate broker license number 00968284 to respondent Chavez on November 24, 2009. Chavez was previously licensed as a real estate salesperson, from September 2, 1987, through November 23, 2009. Chavez is the designated officer for corporate real estate broker Investment Bankers Network, Inc., license number 01890554, effective from January 25, 2011, to January 24, 2015. Chavez received a mortgage loan originator license endorsement, Nationwide Mortgage Licensing System (NMLS) ID 367452, in April 2011.

3. The Bureau issued real estate salesperson license number 01827321 to respondent Sanadhya on October 2, 2007. The license was conditionally suspended from April 3, 2009, through November 3, 2010, for failure to complete a required course of study. Sanadhya was licensed under the employment of Chavez from November 15, 2010, through June 15, 2011. Sanadhya has been licensed under the employment of corporate real estate broker Investment Bankers Network, Inc., since June 16, 2011. Sanadhya received a mortgage loan originator license endorsement, NMLS ID 380632, in April 2011.

The Bureau's Charges

4. In its Accusation and Supplemental Accusation, the Bureau charges both respondents with unlicensed activity/unlawful compensation (First Cause for Discipline), fraud/dishonest dealing (Second Cause for Discipline), and grounds for revoking mortgage loan originator license endorsements (Fifth Cause for Discipline). The Bureau also charges only respondent Chavez with using an unlicensed branch office (Third Cause for Discipline) and using an unlicensed business, Inbanet, LLC, to engage in activities requiring a real estate license (Fourth Cause for Discipline).

5. The Bureau alleges as follows: Respondents offered to help Guillermo and Graciela C. obtain a loan for and negotiate the purchase of real property in Downey. Respondents "made substantial misrepresentations to Guillermo and Graciela C. in order to induce them to enter into a loan" secured by their commercial property on Salt Lake Avenue in Cudahy. (Ex. 1.) Respondents instructed Guillermo and Graciela C. to sign loan applications that falsely stated that they were interviewed by Mark Glasier of HarvestFinancial.net, Inc., and Joe Zacharia of California Equity Lenders, Inc. Respondents induced Guillermo and Graciela C. to believe respondents were acting on their behalf as mortgage brokers, when they were, in fact, acting on behalf of Inbanet, LLC, and respondents failed to inform Guillermo and Graciela C. that they had an ownership interest in Inbanet, LLC, which received a \$6,750 fee in connection with the transaction. Respondents failed to provide Guillermo and Graciela C. with signed copies of loan documents upon request. Respondents conducted business at 10455 Lakewood

Boulevard, Suite 102, in Downey, which was not listed as a branch office or the main office address for Chavez. Respondent Sanadhya, while his license was suspended, performed services for which a license is required.

Respondents' Relationship with Inbanet, LLC

6. Inbanet, LLC, filed Articles of Organization with the Secretary of State on October 27, 2009, identifying Manuel Ramos as a member and the initial agent for service of process. (Ex. 5.)

7. Respondent Chavez filed a Statement of Information with the Secretary of State on March 4, 2010, listing himself, Sanadhya, and Martha Liliana Ramos as managing members of Inbanet, LLC; the statement also identified Martha Liliana Ramos as Chief Executive Officer and Manuel Ramos as agent for service of process.

8. Neither Inbanet, LLC, Manuel Ramos, nor Martha Liliana Ramos was licensed by the Bureau at the time of the transactions relevant to this matter, which occurred in early 2010. Sanadhya's license was suspended on April 3, 2009, and was not reinstated until November 4, 2010, after the March 2010 filing with the Secretary of State.

9. Chavez testified that Sanadhya works for Inbanet, LLC, as a licensed real estate salesperson and that, in March 2011, Sanadhya was made a managing member of Inbanet, LLC. Indeed, a Certificate of Amendment filed with the Secretary of State on March 25, 2011, identifies Sanadhya as managing member of Inbanet, LLC. But Sanadhya was already identified as a managing member on the March 4, 2010, filing. (Ex. 5.)

Respondents' Transactions with Guillermo and Graciela C.

10. In January 2010, Manuel Ramos, Guillermo and Graciela C.'s financial advisor, introduced them to respondents at Inbanet, LLC's office at 10445 Lakewood Blvd., Suite 102, in Downey. At the time of the meeting, Guillermo and Graciela C. owned three properties: their own residence on Raviller Drive in Downey, a residential rental property in Cudahy, and a commercial property on Salt Lake Avenue in Cudahy. They also owned their own business, which they operated out of rented commercial space. Manuel Ramos introduced them as persons interested in obtaining funds to purchase a house on Haledon Street in Downey. They told Chavez that they had sought financing at their bank, Bank of America, but needed more money than the bank would approve. Chavez testified that, at that first meeting, Guillermo and Graciela C. told him that they had already made an offer on Haledon and were in escrow, so that "the clock was ticking" on the deadline to obtain additional funding. Chavez agreed to try to obtain a loan for the necessary funds.

11. Chavez attempted to procure a 30-year fixed-rate loan on Guillermo and Graciela C.'s owner-occupied residential property on Raviller Drive in Downey, in the amount of \$285,000, at 8.99 percent interest, from a private lender. Chavez explained to Guillermo and

Graciela C. that the interest rate was higher than might be obtained from a commercial lender; Guillermo C. instructed Chavez to proceed anyway because of the proximity of the deadline for escrow to close on the Haledon purchase.

12. Guillermo and Graciela C. signed a Uniform Residential Loan Application for a loan in the amount of \$285,000, at an interest rate of 5.25 percent, for the refinancing of their Downey home; the document identifies the loan originator as Mark Glasier of Harvest Financial.net Inc. in Lake Forest. Graciela C. testified that she never spoke with Mark Glasier, but that she does not know whether her husband did. The \$285,000 loan application, with signatures dated January 11, 2010, reflects that Guillermo and Graciela C.'s monthly income was \$15,943. (Ex. 8, pp. 141-144) and that they owned three properties, i.e., the Downey home and the two Cudahy properties.

13. The private lender did not approve the loan application.

14. Chavez then informed Guillermo and Graciela C. that he could attempt to procure a loan on their commercial property on Salt Lake Avenue in Cudahy, explaining that the interest rate would be higher than the loan that fell through because the new loan would be secured by commercial rather than owner-occupied residential property. Guillermo and Graciela C. instructed Chavez to proceed.

15. After a drive-by appraiser looked at the Cudahy property, Chavez was able to obtain a loan for Guillermo and Graciela C. in the amount of only \$225,000 at 12 percent interest; no formal appraisal of the Cudahy commercial property was performed because of the short timeframe for obtaining the loan. The loan was a 24-month interest-only loan, with a balloon payment due at the end of the term, and a prepayment penalty during the first six months of the loan.^{2,3} Respondents testified that, although the terms of the 12 percent loan were the best they could get given the short amount of time before the Haledon property escrow

² Guillermo and Graciela C. had first received a letter, dated January 26, 2010, from the loan originator; Joe Zacharia of California Equity Lenders, Inc. (CEL) in Agoura Hills, setting forth preliminary terms of a loan on the commercial Cudahy property. Those preliminary terms reflected a loan amount of \$280,000, an interest rate of 11 or 12 percent, a 24-month term, a six-month prepayment penalty, and points to CEL (four percent) and to Inbanet (three percent).

³ The commercial refinancing loan was separate from Guillermo and Graciela C.'s purchase loan for the Haledon property. Chavez testified that there were two escrow companies involved in the transactions—North Orange County Escrow was used for the commercial property loan, and another was used for the Haledon purchase.

closed, Chavez informed Guillermo and Graciela C. that he would, after the loan funded, help them seek to refinance the commercial Cudahy property loan with a commercial lender on more favorable terms before the balloon payment was due.⁴

16. Chavez testified that Zacharia's staff completed the commercial property refinance loan application based in part on information Chavez had obtained from Guillermo C. (Ex. B, pp. 59-64.) Chavez testified that he confirmed all of the information on the loan application, line by line, with Guillermo and Graciela C., as is his practice with all loan applications he works on. Chavez informed Guillermo and Graciela C. of the terms of the loan and of the fact that a balloon payment would be due. Sometimes he spoke Spanish with Guillermo and Graciela C., sometimes English; he explained the loan terms in English, but Guillermo and Graciela C. never complained that they did not understand him or request that any of the loan documents be translated into Spanish. Sanadhya confirmed that Chavez had informed Guillermo and Graciela C. that he would charge a commission for his services, that Chavez discussed the interest rate, the four points to CEL, the three points to Inbanet LLC, the six-month prepayment penalty, and the reason the rates were so high on the commercial property, and that Guillermo C. decided to go forward with the loan. After fees, charges, and taxes, all of which Chavez discussed with Guillermo and Graciela C., they were to receive \$200,509.07, as set forth on the Borrower Statement issued by North Orange County Escrow. (Ex. 6, p. 22.)

17. Chavez testified that Guillermo C. was quite familiar with the terms of the loan, and that he would frequently visit the Inbanet offices, without his wife, to discuss both the loan and his purchase of Haledon. Chavez testified that he never pressured Guillermo and Graciela C. into agreeing to the loan, that he never made any misrepresentations about the loan, that he does not practice that way, that it is not in his nature to practice that way, and that this is the first complaint ever made against him.

18. There was a notary public present from the escrow company when Guillermo and Graciela C. signed the loan documents. Chavez saw the notary notarize the documents and provide a complete set to Guillermo and Graciela C.; Graciela C. admitted that respondents provided her husband with a full set of the unsigned loan documents. Chavez did not keep a set of the signed documents for himself. After the loan funded, when Graciela C. asked for a copy of the signed documents, Chavez referred her to the lender. The weight of the evidence was insufficient to establish that respondents acted improperly in failing to provide a signed copy of the documents to Guillermo and Graciela C., when a complete unsigned set was given to them by the escrow officer and when they could have obtained a signed set from the escrow officer or the lender.

⁴ No subsequent refinancing took place. Guillermo and Graciela C. made monthly loan payments and, after the six-month pre-payment penalty period elapsed, they repaid the loan entirely in one balloon payment in October or November 2010.

19. Graciela C. testified that she never spoke with Joe Zacharia or CEL, and denied that respondents explained why they could not get a better interest rate than 12 percent on the Cudahy commercial property, or what the costs of the loan were, or that Inbanet was to receive a referral fee. But she also testified that she never spoke to respondents about the commercial property loan prior to signing the loan documents. She testified that her husband told her that he had discussed it with them. When respondents asked Graciela C. to sign the loan documents, her husband had already signed them, and he told her to sign them.

20. The weight of the evidence established that Chavez was conducting licensed business under the Inbanet name, that Inbanet was not a licensed entity at the time of the transactions in question, and that Chavez did not list Inbanet's address on his license as a branch office. The Settlement Statement from North Orange County Escrow for the commercial property loan reflects that a referral fee of \$6,750 was to be paid to CEL, not to Inbanet, LLC. CEL later paid that fee to Inbanet, LLC.⁵ At the time of the loan transaction, however, Inbanet, LLC, was not a licensed entity; Chavez held the license. At the hearing, Chavez affirmed that he should have put the transaction under his own name, not Inbanet's. He testified that he made a mistake in not doing so, saying that, though it is no excuse, he was a new broker, having only obtained his license in November 2009. When he found out that he was practicing contrary to the Bureau's rules, he registered Investment Bankers Network, LLC, as a licensed corporation on January 25, 2011; he registered Inbanet as a fictitious name of the corporation on July 13, 2012.

21. After the loan funded on February 19, 2012, Guillermo and Graciela C. changed their minds about purchasing the Haledon property, having learned that criminal activity was reported to have taken place at that property, and they asked respondents to reverse the loan. Respondents told them it was too late to do so, as the loan had already been funded.

22. Through an attorney, Guillermo and Graciela C. filed with the Bureau a consumer complaint against respondents, Inbanet, LLC, and Manuel Ramos.⁶

⁵ Chavez testified that he explained to Guillermo and Graciela C. that the referral fee would eventually be paid to Inbanet, LLC, through CEL. But he also confusedly testified that in listing CEL rather than Inbanet, LLC, the escrow company must have filled out the Settlement Statement erroneously. He had Guillermo and Graciela C. initial the page anyway, testifying that the mistake could have easily been corrected later.

⁶ Guillermo C. died on August 25, 2012. Graciela C. testified that she saw her husband sign an affidavit prepared by their attorney. An apparently notarized "Affidavit by Guillermo [C.]" was attached to the consumer complaint filed with the Bureau. Given the unavailability of the affiant, Government Code section 11513, subdivision (d), would govern the evidentiary value of the affidavit, if authenticated. But the authenticity of the attached affidavit was convincingly refuted by Graciela C., who testified that the affidavit signature purporting to be Guillermo C.'s was not her husband's, and that whoever signed the affidavit misspelled their last name.

23. The evidence at hearing was not sufficient to clearly and convincingly establish that respondents improperly induced Guillermo and Graciela C. into taking out the loan on the commercial property in Cudahy, or that they engaged in fraud or dishonest dealing. The weight of the evidence was insufficient to establish that respondents made substantial misrepresentations to Guillermo and Graciela C., including misrepresentations as to fees to be paid to Inbanet, LLC, and misrepresentations as to whether respondents were to receive a fee in connection with the loan, in order to induce them to procure a loan on their commercial property in Cudahy.

24. Graciela C. testified that Guillermo C. very much wanted to go forward with the loan on the commercial Cudahy property and with the purchase of the Haledon house, which he insisted was a good investment and which he and Graciela C. intended to live in. She testified that although Ramos had said he could obtain a purchase loan for her and her husband, respondents themselves made no such representation. Graciela C. testified that although Chavez assisted in obtaining the loan, he did not assist in the purchase of the Haledon property. Chavez agrees that he advised Guillermo and Graciela C. to take out the loan, and testified that he would have done so himself, even with the balloon payment; he was confident that they would be able to refinance and obtain better terms. While Guillermo and Graciela C. relied to some extent on Chavez's advice as a real estate professional, there was insufficient evidence on this record that he misled them; they themselves had some level of sophistication, as owners of three other properties and a business operation.

25. Graciela C. testified that she signed the loan documents because Guillermo C. instructed her to do so, despite her own misgivings about the terms of the loan. Graciela C. testified that her husband was somewhat confused around the time of the loan negotiations because of certain medical procedures that he had undergone. Her testimony on the subject of Guillermo C.'s medical condition, however, is not supported by authoritative medical evidence. It was not sufficiently persuasive to establish that Guillermo C.'s capacity to negotiate and enter into the financing contract was diminished in any way or that he was particularly susceptible to undue influence or coercion by respondents, or, indeed, that he was incapable of correctly spelling his own name on an affidavit in support of the consumer complaint filed in this matter.

26. The fact that there is a discrepancy about Guillermo and Graciela C.'s monthly income in two of the loan applications does itself support allegations of fraud or dishonesty. The \$225,000 loan application reflects that Guillermo and Graciela C. intended to rent their residence in Downey after moving into Haledon, and specifies the rental value of their residence as \$3,000 per month; that figure, Chavez testified, was based on what Manuel Ramos's nephew and a roommate were proposing to pay to rent the house. The prior loan application for the Downey residence, in the amount of \$285,000 at 8.99 percent interest, reflects that Guillermo and Graciela C. intended to continue to live in their home on Raviller. (Ex. 8, p. 144, Declaration 1.) The discrepancy is explained, and any appearance of fraud averted, by the annotation on the loan application that the borrowers intended to rent out the Raviller home

once they moved into the Haledon home.⁷ The application clearly listed Raviller as their primary residence, and the monthly rental income of \$3,000 for Raviller was annotated “to become a rental.” That would not likely tend to mislead or defraud the lender.

27. The evidence at hearing was not sufficient to clearly and convincingly establish that respondents were negotiating the purchase of the Haledon property, or that they induced Guillermo and Graciela C. to believe respondents were acting independently of Inbanet, LLC. Graciela C. testified that Manuel Ramos introduced her and her husband to respondents at the offices of Inbanet, LLC, and all of them discussed various ways to enable her and her husband to qualify to purchase the Haledon property. Chavez took steps to obtain a purchase money loan for the Haledon property. Chavez presented loan application documents to Guillermo and Graciela C., reflecting that Mark Glasier of Directors Financial Group would be the loan originator. But Chavez denied that he was the real estate agent on the Haledon property; he maintained that escrow was already opened when he met Guillermo and Graciela C., and that Arthur and Lilly Hernandez, a husband and wife team, were their agents. Chavez sent a letter of intent dated January 22, 2010, identifying himself as Managing Partner of Inbanet, to Guillermo and Graciela C., to the attention of Arthur Hernandez. The letter states that it is in response to a request for credit approval for a loan on the Haledon property in the amount of \$729,000, at 5.25 percent interest and with specified fees to be paid to Inbanet. (Ex. 8, p. 124.) Graciela C. testified that she knew nothing about this letter. Chavez testified that he prepared the letter to show Art Hernandez, Guillermo and Graciela C.’s real estate agent, the terms he thought he could obtain, though the lender had not yet approved them. Chavez testified that Art Hernandez told him that Haledon was a short sale, and that Hernandez frequently contacted Chavez to inquire about the status of the loan as the closing date of escrow approached.

28. Factual findings must be made in the absence of testimony from Guillermo C., who, the evidence demonstrates, was far more involved in and knowledgeable about the transactions in question than his wife. It was apparent from Graciela C.’s testimony that it was her husband who had engaged with respondents and others in negotiating the terms of the loans, that she had not been privy to those negotiations, and that she had signed documents because her husband instructed her to do so. It is not surprising, therefore, that at the hearing, Graciela C.’s testimony about the negotiations was confused, and that at times she contradicted complainant’s allegations on important particulars.

29. Graciela C. testified that respondents were trying to sell her and her husband the Haledon property, but she also testified that respondents were not acting as her agent in the purchase of that house. She testified that her husband saw the Haledon house and wanted to buy it, and that he went to Manuel Ramos and signed documents before she even knew about it. She

⁷ Chavez again appeared confused about this at the hearing, testifying that Glasier, who filled out the application, must have made an error on the application, which Chavez missed when he reviewed each line with Guillermo and Graciela C. He again argued, though, that the mistake could easily have been corrected later.

testified that her husband may have opened escrow on the Haledon property without her knowledge, before applying for a loan with respondents. She testified that she signed the loan documents presented by respondents based not on Chavez's representations, but on her husband's advice alone. She testified that she accepted whatever her husband told her to do in connection with the transactions at issue in this matter. In light of her confusion, her testimony that respondents did not tell her that they had to change the loan to one secured by commercial property was not convincing. She testified that Chavez did not tell her the loan had a prepayment penalty for the first six months, but her husband clearly understood that term and paid off the loan after six months had expired. Although she testified that she did not know whom Art and Lilly Hernandez represented in the purchase transaction and that she believed they did not represent her and her husband, she also testified that her husband gave Art and Lilly Hernandez a check for \$10,000 as a deposit on Haledon. Although Graciela C. was not happy with the high interest rate she had to pay on the Cudahy property loan, she signed the loan documents anyway at her husband's urging. She also testified that she signed the \$729,000 purchase money loan application even though she thought it contained incorrect information about the mortgage on the residential rental property in Cudahy. She testified that respondents never told her of various costs associated with the loans, such as the origination cost and the points to CEL and to Inbanet, but she then conceded that she and her husband knew of the costs associated with the loans, that her husband wanted to proceed with the loan transactions despite the costs, and that based on her husband's advice she signed the loan documents and authorized the loan transaction. She signed the deed of trust for the loan, which bears the signature and stamp of a notary; she testified that there was no notary present when she signed, but nevertheless agrees that someone took her fingerprint. She testified that she signed the loan documents before learning of criminal activity at the Haledon house, which caused her not to want to go through with the purchase, but her husband then decided he wanted to complete the purchase in order to "flip" the property, based on Manuel Ramos's advice. Respondents, however, never discussed "flipping" the property at meetings with Guillermo and Graciela C. Graciela C.'s testimony, including testimony that on January 26, 2010, she met with respondents and her husband and signed various documents bearing different dates, was insufficient to establish improper conduct on the part of respondents.

30. Respondent Sanadhya testified that after receiving his conditional salesperson license in 2007, he sold life insurance policies and annuities and he drove limousines part-time until he completed his real estate licensing coursework in 2010.⁸ Sanadhya's license was suspended because he had not completed his course requirements; during the suspension, Chavez testified that he took steps to ensure that Sanadhya did not perform any acts requiring a license. Sanadhya testified that he scanned, faxed, and copied documents, did general office work and customer service, made telephone calls, and sat in on some meetings, all in order to learn the business. Those are the services Sanadhya performed with respect to the loans at issue in this case.

⁸ Sanadhya testified that he received his insurance salesperson license in 2007, that it is still active, and that he has never been disciplined by the Department of Insurance.

31. There was insufficient evidence on this record to establish that the tasks Sanadhya performed in connection with the loans in question were any different from his usual tasks and required a license. Sanadhya gave no advice to Guillermo and Graciela C., except to remark on one occasion that he thought the Haledon property was selling at a good price, and he did not discuss with them the terms of the loans. He testified that meetings with Guillermo and Graciela C. were conducted in English, with some words in Spanish. He testified that he participated in a telephone call with Mark Glasier, who wanted him to translate some loan application language for Guillermo C., who was also participating in the telephone call. Sanadhya testified that Mark Glasier filled out the \$729,000 and \$285,000 loan applications; a letter to the Bureau from Mark Glasier on Harvest Financial letterhead dated May 15, 2011, appears to confirm this. There was also a telephone call between Guillermo C. and Joe Zacharia in which Sanadhya did some translating; Zacharia filled out the loan application based on information provided to him by Sanadhya, which Sanadhya had received from Chavez. Sanadhya testified that he does not recall when he became a managing member of Inbanet LLC, and that the privately held stock has no value. That Sanadhya was listed as a managing member during the period of his license suspension, however, is not sufficient to support the cause for discipline stated in the Accusation.

32. Respondent Chavez testified that his practice as a real estate broker allows him to support his family, including his five children, two of whom are in college, and his parents. Respondent Chavez has never been disciplined by the Bureau except for a suspension for not having completed certain course requirements. He testified that a suspension or revocation of his license would create a great financial hardship for him. His licensed practice is all he knows how to do; he has worked in real estate for 26 years. He is on the Orange County chapter board of the National Association of Hispanic Real Estate Professionals (NAHREP), and has appeared as a NAHREP conference speaker. He is a volunteer mentor for children at his church, having completed a training program on working with children, and coaches the children's softball team. He accepts full responsibility for his failure to report the new branch address and his failure to license Inbanet LLC as an entity, and testified that he is now fully in compliance with all real estate laws. He has a long license history and is hard-working.

33. Sanadhya is the sole income earner for his parents and his daughter in India and for his wife and a new baby here. He would be devastated, he testified, if his license were revoked or suspended.

34. Chavez and Sanadhya submitted numerous character reference letters dated between September 2012 and February 2013 from, among others, a friend who is an attorney and who refers clients to respondents; a realtor at Century 21 who does business with respondents; a friend and trust deed investor whose money respondents manage; the owner of California Private Lenders, a lender who works with respondents' clients; a registered real estate appraiser who does business with Chavez; the Chief Executive Officer of Rescue, which helps homeowners, and a member of the national board of NAHREP; a hotel and shopping center developer; a former employer at a company that funds commercial loans; a past president of the Los Angeles County Boards of Real Estate; and a realtor at Keller Williams Realty. Respondents refer business to some but not all of these references. The authors of the letters,

who were aware of the allegations in the Accusation, attest to respondents' good character, trustworthiness, professionalism, work ethic, integrity, compassion, voluntarism, and good reputation among their peers and colleagues.

Costs of Investigation and Enforcement

35. The Bureau has requested reimbursement of its costs of investigation, in the amount of \$604.50, and prosecution, in the amount of \$1,379.50, for a total of \$1,984. The Bureau's investigation costs are supported by a declaration made by complainant and dated June 3, 2013, with an attachment that describes the work performed and time spent by the Bureau's special investigators, and their hourly rates. The costs of enforcement are supported by a declaration dated May 31, 2013, by the Bureau counsel assigned to this case, with an attachment describing the tasks performed, the time spent on each task, and the attorney's hourly rate.

36. The Bureau prevailed on four of the five causes for discipline alleged against respondent Chavez and none of the three causes for discipline alleged against respondent Sanadhya. Costs in the amount of \$1,600, to be paid by respondent Chavez, are deemed to be reasonable.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99; *Pipkin v. Bd. of Supervisors* (1978) 82 Cal.App.3d 652.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

2. Cause exists to suspend or revoke the licenses and licensing rights of respondent Chavez under Business and Professions Code (Code) section 10177, subdivisions (d) or (g), for violation of Code section 10137, as alleged in the First Cause for Discipline, on the ground that he negotiated fees to compensate Inbanet, LLC, which was not licensed and which had unlicensed members, as set forth in Factual Findings 8 and 10 through 31. Cause does not exist to suspend or revoke the licenses and licensing rights of respondent Sanadhya under Code section 10177, subdivisions (d) or (g), for violation of Code section 10130, as set forth in Factual Findings 30 and 31.

3. Cause does not exist to suspend or revoke the licenses and licensing rights of either respondent Chavez or respondent Sanadhya under Code sections 10176, subdivisions (a), (b), (g), or (i), or 10177, subdivision (g), as alleged in the Second Cause for Discipline, as set forth in Factual Findings 10 through 31.

4. Cause exists to suspend or revoke the licenses and licensing rights of respondent Chavez under Code section 10163 and California Code of Regulations, title 10, section 2715, as alleged in the Third Cause for Discipline, on the ground that respondent Chavez used an unlicensed branch office to conduct the transactions at issue in this matter, as set forth in Factual Findings 8 and 10 through 31.

5. Cause exists to suspend or revoke the licenses and licensing rights of respondent Chavez under Code section 10159 and California Code of Regulations, title 10, section 2731, as alleged in the Fourth Cause for Discipline, on the ground that respondent Chavez acted without Bureau authorization in using the unlicensed business name "Inbanet, LLC" to engage in activities requiring the issuance of a real estate license, as set forth in Factual Findings 8 and 20.

6. Cause exists to suspend or revoke the licenses and licensing rights of respondent Chavez under Code sections 10166.05, subdivision (c), and 10166.051, subdivisions (a) and (b), as alleged in the Fifth Cause for Discipline, on the ground that he negotiated fees to compensate Inbanet, LLC, which was not licensed and which had unlicensed members, and on the ground that he used an unlicensed branch office to conduct the transactions at issue in this matter, as set forth in Factual Findings 8 and 10 through 31. Cause does not exist to suspend or revoke the licenses and licensing rights of respondent Sanadhya under Code sections 10166.05, subdivision (c), and 10166.051, subdivisions (a) and (b), as alleged in the Fifth Cause for Discipline, as set forth in Factual Findings 30 and 31.

7. Complainant requests reimbursement of the costs of investigation and enforcement under Code section 10106. Section 10106 provides that in any order issued in resolution of a disciplinary proceeding, the commissioner may ask 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. Section 10106 states that a certified copy of the actual costs, signed by the commissioner or the commissioner's designated representative shall be prima facie evidence of reasonable costs of investigation and enforcement.

8. California Code of Regulations, title 1, section 1042, describes the procedures for submitting a request for reimbursement of the costs of investigation and enforcement. Section 1042 requires that, except as otherwise provided by law, costs are to be supported by a declaration containing specific facts to support findings regarding actual costs incurred and the reasonableness of the costs. A declaration is defined as a statement under penalty of perjury. (Cal. Code Regs., tit. 1, § 1002, subd. (a)(4).)

9. The costs of investigation and enforcement in the amount of \$1,600 are supported by a declaration, and are reasonable. (Factual Findings 35, 36.)

10. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing agency must consider in assessing costs. It must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the

penalty. The agency must also consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge to the discipline or is unable to pay. Respondent has not established a basis to reduce the costs of enforcement based on an inability to pay.

11. Considering all of the admissible facts in this case, which did not establish by clear and convincing evidence that respondent Chavez defrauded Guillermo and Graciela C., but which did establish that he violated Code requirements concerning payments to unlicensed individuals and the conduct of business only at licensed locations, and being mindful of the need to protect the public, restricting Chavez's license for a period of two years, with education requirements and payment of costs, would be sufficient to emphasize the importance of the applicable laws and regulations to respondent Chavez and to safeguard the public's safety and welfare.

ORDER

The Accusation is dismissed as to respondent Kuldeep Sanadhya.

All licenses and licensing rights of respondent Victor Chavez under the Real Estate Law, and mortgage loan originator license endorsement NMLS ID 367452, are revoked; provided, however, a restricted real estate broker license and mortgage loan originator license endorsement shall be issued to respondent Chavez under section 10156.5 of the Business and Professions Code if respondent Chavez makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license and endorsement within 90 days from the effective date of this Decision. The restricted license and endorsement issued to respondent Chavez 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:

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

2. The restricted license and endorsement issued to respondent Chavez may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent Chavez 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 Chavez shall not be eligible to apply for the issuance of an unrestricted real estate license or mortgage loan originator license endorsement, 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.

4. Respondent Chavez 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 Chavez fails to satisfy this condition, the Commissioner may order the suspension of the restricted license and mortgage loan originator license endorsement until respondent Chavez presents such evidence. The Commissioner shall afford respondent Chavez the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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

6. Respondent Chavez shall, within 90 days from the effective date of this Decision, pay to the Bureau of Real Estate, or other entity as designated by the commissioner, its costs of investigation and enforcement in the amount of \$1,600.00.

DATED: August 27, 2013



HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings