

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

FILED

AUG - 6 2009

DEPARTMENT OF REAL ESTATE

By A. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MICHAEL GARCIA,) No. H-5197 SAC
Respondent.)

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On April 22, 2009, an Accusation was filed in this matter against Respondent
MICHAEL GARCIA.

On July 1, 2009, Respondent MICHAEL GARCIA petitioned the Commissioner
to voluntarily surrender his restricted real estate salesperson license pursuant to Section 10100.2
of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent MICHAEL GARCIA's petition for
voluntary surrender of his restricted real estate salesperson license is accepted as of the effective
date of this Order as set forth below, based upon the understanding and agreement expressed in
the Declaration executed by Respondent MICHAEL GARCIA on July 1, 2009 (attached as
Exhibit "A" hereto).

///

///

///

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6 Telephone: (916) 227-0781

FILED

APR 22 2009

DEPARTMENT OF REAL ESTATE

By H. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11
12 In the Matter of the Accusation of)
13 CHRISTOPHER JAMES MESUNAS,) No. H-5197 SAC
14 and MICHAEL GARCIA,) ACCUSATION
15 Respondents.)

16 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of
17 the State of California, for cause of Accusation against CHRISTOPHER JAMES MESUNAS,
18 and MICHAEL GARCIA, (hereinafter "Respondents"), are informed and alleges as follows:

19 PRELIMINARY ALLEGATIONS

20 1

21 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of
22 the State of California, makes this Accusation in his official capacity.

23 2

24 Respondents are presently licensed and/or have license rights under the Real
25 Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").

26 ///

27 ///

1 3

2 At all times mentioned, Respondent CHRISTOPHER JAMES MESUNAS,
3 (hereinafter "MENSUNAS") was and is licensed by the State of California Department of Real
4 Estate (hereinafter "the Department") individually as a real estate broker.

5 4

6 At all times mentioned, Respondent MICHAEL GARCIA (hereinafter
7 "GARCIA") was and is licensed by the Department as a restricted real estate salesperson.

8 5

9 At no times mentioned was 2nd Chance Negotiations Inc., (hereinafter "2nd
10 Chance") licensed by the Department as a real estate broker corporation.

11 6

12 At all times mentioned herein, 2nd Chance, MESUNAS, and GARCIA engaged in
13 the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in
14 the State of California, within the meaning of Section 10131(d) of the Code, including the
15 operation and conduct of a mortgage loan brokerage and/or loan modification business with the
16 public wherein each of them solicited lenders and borrowers for or negotiated loans or collected
17 payments and/or performed services for borrowers or lenders or note owners in connection with
18 loans secured directly or collaterally by liens on real property for or in expectation of
19 compensation.

20 FIRST CAUSE OF ACTION

21 7

22 Each and every allegation in Paragraphs 1 through 6, inclusive, above, is
23 incorporated by this reference as if fully set forth herein.

24 8

25 Beginning about June 2008 and continuing thereafter, GARCIA and/or
26 MENSUNAS willfully caused, suffered, permitted, and/or disregarded the real estate law by

27 ///

1 allowing 2nd Chance to perform the acts and conduct the real estate activities described in
2 Paragraph 6, above, including but not limited to the activities described in Paragraph 9, below.

3 9

4 Beginning about June 2008 and continuing thereafter, in the course of the
5 employment and activities described in Paragraph 8, above, MENSUNAS and/or GARCIA
6 and/or other agents or employees of 2nd Chance whose identities are unknown at this time, on
7 behalf of 2nd Chance, solicited and/or performed services for borrowers, in connection with loans
8 secured directly or collaterally by liens on real property or on a business opportunity, for or in
9 expectation of compensation. Such activities include, but are no limited to:

10 **BORROWER**

PROPERTY ADDRESS

11 Juanita and Juan Ceja	5350 Great Smokey, Sacramento, California
12 Todd Barnett	1012 Village Circle, Winters, California
13 Michael and Colleen Menzel	9683 Shelby Drive, Whitelake, Michigan
14 Amado Molina	2744 Ellen Street, Sacramento, California
15 Joe Rodriguez	1621 Los Robles Blvd., Sacramento, California

16 10

17 In acting as described in paragraphs 8 through 9, above, MENSUNAS and/or
18 GARCIA willfully caused, suffered, and/or permitted, 2nd Chance to willfully disregard Section
19 10130 of the Code.

20 11

21 The facts described above as to the First Cause of Accusation constitute cause to
22 suspend or revoke all licenses and license rights of MENSUNAS and GARCIA pursuant to the
23 provisions of Section 10130 of the Code in conjunction with Section 10177(d) of the Code.

24 **SECOND CAUSE OF ACTION**

25 12

26 Each and every allegation in Paragraphs 1 through 11, inclusive, above are
27 incorporated by this reference as if fully set forth herein.

In connection with the operation and conduct of the real estate activities described in Paragraph 6, MENSUNAS and/or GARCIA willfully caused, suffered, permitted, and/or disregarded the real estate law by allowing 2nd Chance to engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees within the meaning of Sections 10026 and 10131.2 (hereinafter "advance fee") of the Code including but not limited to the following:

HOMEOWNER	DATE	AMOUNT
Juanita Ceja	5/29/08	\$800
Todd Barnet	6/30/08	\$1,995
Amado Molina	8/20/08	\$2,000
Joe Rodriguez	8/6/08	\$1,500
Angela Sbitner	7/30/08	\$3,700
Hector R. Ortiz	4/15/08	\$650
Brenda Williams	8/13/08	\$1,795
Charles Taylor	7/7/08	\$1,650

In connection with the collection and handling of said advance fee, MENSUNAS and/or GARCIA willfully caused, suffered, permitted, and/or disregarded the real estate law by allowing 2nd Chance:

(a) Failed to cause the advance fee contract and all materials used in obtaining the advance fee agreement to be submitted to the Department of Real Estate prior to use as required by Section 10085 of the Code and Section 2970 of Title 10 of the California Code of Regulations (hereinafter "the Regulations").

(b) Failed to immediately deliver said trust funds into a neutral escrow depository, or into a trust fund account in violation of Section 10146 of the Code.

(c) Failed to furnish the principal borrower the verified accounting required by Section 10146 of the Code and Section 2972 of the Regulations.

The acts and/or omissions of MENSUNAS and GARCIA described in the Second Cause of Action, constitute violation of Section 10177(d) of the Code in conjunction with Sections 10085 and 10146 of the Code, and Sections 2970 and 2972 of the Regulations, and are cause for the suspension or revocation of MENSUNAS and GARCIA's license and license rights.

THIRD CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 15, inclusive, above, is incorporated by this reference as if fully set forth herein.

In connection with the operation and conduct of the real estate activities described in Paragraph 6, MENSUNAS and/or GARCIA and/or other agents or employees of 2nd Chance whose identities are unknown at this time, on behalf of 2nd Chance, accepted or received funds in trust (hereinafter "trust funds") from or on behalf of lenders, investors, note purchasers, borrowers, and others in connection with the servicing, solicitation, negotiation, processing, and consummation of mortgage loan investments by 2nd Chance.

The aforesaid trust funds accepted or received by MENSUNAS and/or GARCIA and/or other agents or employees of 2nd Chance whose identities are unknown at this time, on behalf of 2nd Chance were deposited or caused to be deposited into on or more bank accounts

///

///

///

///

///

1 (hereinafter "trust funds accounts") maintained by MENSUNAS and/or GARCIA for the
2 handling of trust funds, including but not limited to the following:

<u>TITLE AND ACCOUNT NUMBERS</u>	<u>BANK</u>
3 4 2 nd Chance Negotiation Inc. 5 <u>Account No. 0210033852</u> 6 (Bank #1)	American River Bank 9750 Business Park Drive #100 Sacramento, CA 95872
7 2 nd Chance Negotiations Inc. Client Trust Account 8 <u>Account No. 0210034428</u> 9 (Trust #1)	American River Bank 9750 Business Park Drive #100 Sacramento, CA 95872

10
11 19

12 In the course of activities described in Paragraph 6 and for each of the trust funds
13 accounts identified in Paragraph 18, MENSUNAS and/or GARCIA willfully caused, suffered,
14 permitted, and/or disregarded the real estate law by allowing 2nd Chance:

15 (a) Failed to deposit trust funds into one or more trust funds accounts in the
16 name of a real estate broker as trustee at a bank or other financial institution, in conformance
17 with Section 10145 of the Code and Section 2832 of the Regulations.

18 (b) Failed to maintain a written control record of all trust funds received and
19 disbursed, containing all information required by Section 2831 of the Regulations.

20 (c) Failed to maintain separate beneficiary or transaction records containing
21 all information required by Section 2831.1 of the Regulations.

22 (d) Failed to reconcile the balance of separate beneficiary or transaction
23 records with the control record of trust funds received and disbursed at least once a month, and/or
24 failed to maintain a record of such reconciliations for each account as required by Section 2831.2
25 of the Regulations.
26
27

The acts and/or omissions of MENSUNAS and GARCIA willfully caused, suffered, and/or permitted 2nd Chance to willfully disregard the real estate law as alleged in the Third Cause of Action constitute grounds for disciplinary action under the following provisions:

(a) As to Paragraph 19(a), under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;

(b) As to Paragraph 19(b), under Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;

(c) As to Paragraph 19(c), under Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code; and

(d) As to Paragraph 19(d), under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code.

PRIOR PROCEEDINGS

On or about March 24, 2009, in Case No. H-5181 SAC before the Department of Real Estate, the Real Estate Commissioner issued an Order to Desist and Refrain against 2nd Chance, MENSUNAS, and GARCIA for violation of Sections 10085, 10085.5, 10046, 10177(d), 10130, 10139, 10177(j), and 10137 of the Code, and Sections 2970 and 2972 of the Regulations.

Effective May 28, 2008, in Case No. H-4897 SAC before the State of California Department of Real Estate, GARCIA's real estate salesperson license was revoked, but granted the right to a restricted salesperson license for violation of Sections 490 and 10177(b) of the Code.

///

///

///

///

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

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 (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.



JOE M. CARRILLO
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 16 day of April, 2009