# STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION FLORIDA REAL ESTATE COMMISSION

**DEPARTMENT OF BUSINESS AND** PROFESSIONAL REGULATION. DIVISION OF REAL ESTATE,

Petitioner,

VS.

JUAN C. CHAVARRIAGA,

Respondent.

700 PC 10 A 10:24 Final Order No. <u>BPR-2008-10552</u> Department of Business and Professional

**DOAH** CASE NO.: 08-2165PL 2007-004262

# **FINAL ORDER**

THIS CAUSE came before the FLORIDA REAL ESTATE COMMISSION ("Commission") pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on October 14, 2008, in Ft. Lauderdale Beach, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order in the above-styled cause. A copy of said Recommended Order is attached hereto and incorporated herein as Exhibit "A."

The Petitioner was represented by Patrick Cunningham, Esquire, Senior Attorney for the Division of Real Estate, Orlando, Orange County, Florida. The Respondent was represented by Alan A. Glenn, Esquire of Miami, Florida. The Commission was represented by Tom Barnhart of Tallahassee, Leon County, Florida. After a review of the complete record in this matter, including consideration of the Administrative Law Judge's Recommended Order and the arguments of each party, the Commission makes the following findings of fact and conclusions of law.

## **FINDINGS OF FACT**

- 1. The Administrative Law Judge's findings of fact as set forth in the Exhibit "A" are approved, adopted and incorporated herein by reference.
- 2. There is competent, substantial evidence to support the Administrative Law Judge's findings of fact as adopted by the Commission.

## **CONCLUSIONS OF LAW**

- 3. The Board has jurisdiction of this matter pursuant to Sections 120.569 and 120.57(1), Florida Statutes, Chapter 475, Part I, Florida Statutes, and Chapter 61J2 of the Florida Administrative Code.
- 4. The Administrative Law Judge's conclusions of law as set forth in Exhibit "A" are approved, adopted and incorporated herein by reference, as amended and adopted by the rulings on Petitioner's Exceptions by the Commission as set forth below.
- 5. There is competent, substantial evidence to support the conclusions of law in Exhibit "A", as amended and adopted by the Commission as set forth below.

#### **DISPOSITION**

6. The Commission adopts the Administrative Law Judge's recommendation.

# WHEREFORE, it is hereby ORDERED and ADJUDGED that:

- 1. Respondent is guilty of the violations alleged in Counts III and IV of the Administrative Complaint;.
  - 2. Counts I and II of the Administrative Complaint are dismissed;

- 3. Respondent's real estate license is suspended for one year beginning 30 days after the filing date of this Final Order; and
- 4. Respondent shall pay an administrative fine of \$1,000.00 to the Division of Real Estate within one year of the filing date of this Final Order.

This Order is effective when filed with the Clerk of the Department of Business and Professional Regulation.

**DONE** and **ORDERED** this

\_day of <u>Decaber</u>, 2

FLORIDA REAL ESTATE COMMISSION

By: Thomas O'Bryant, Jr. Director, Division of Real Estate

## **NOTICE OF RIGHT TO JUDICIAL REVIEW**

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the agency clerk of the Department of Business and Professional Regulation and a second copy, accompanied by filing fees prescribed by law, with the district court of appeal in the appellate district where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the order to be reviewed.

# **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Alan A. Glenn, Esquire, 14629 SW 104<sup>th</sup> Street, No. 432, Miami, Florida 33186, Larry J. Sartin, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and to Tom Barnhart, Senior Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on this day of December, 2008.

# STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION FLORIDA REAL ESTATE COMMISSION

FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF REAL ESTATE,

Petitioner,

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FDBPR Case N° 2007004262

JUAN C. CHAVARRIAGA,

Respon	ndent.
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# ADMINISTRATIVE COMPLAINT

State of Florida, Department of Business and Professional Regulation, Division of Real Estate ("Petitioner") files this Administrative Complaint against Juan C. Chavarriaga ("Respondent") and alleges:

# ESSENTIAL ALLEGATIONS OF MATERIAL FACT

- 1. Petitioner is a state government licensing and regulatory agency charged with the responsibility and duty to prosecute Administrative Complaints pursuant to the laws of the State of Florida, in particular Section 20.165 and Chapters 120, 455 and 475, of the Florida Statutes and the rules promulgated pursuant thereto.
- 2. Respondent is a licensed Florida real estate broker associate, issued license number 3130017 in accordance with Chapter 475 of the Florida Statutes.
- 3. The last license issued was as a broker associate at CACF Real Estate, Inc., 15280 NW 79<sup>th</sup> Court #106, Miami Lakes, Florida 33016.

- 4. At all times material, Respondent was a licensed real estate sales associate with Ocampo & Alvarez Realty LLC.
- 5. At all times material Respondent knew or should have known that Alejandro Ochoa was named property manager by Claudia Mejia (Owner) for a property located at 4381 SW 133rd Lane, Miramar, FL 33027 (Subject Property). A copy of correspondence is attached hereto and incorporated herein as Administrative Complaint Exhibit 1.
- 6. On or about March 30, 2006 Respondent rented the Subject Property to Carlos Alvarez for an annual lease amount of \$18,000.00 or \$1,500.00 per month. A copy of the lease is attached hereto and incorporated herein as Administrative Complaint Exhibit 2.
- 7. Respondent rented/leased the Subject Property without authorization from the Owner or the property manager appointed by the Owner.
- 8. Respondent directed funds from the management of the Subject Property to his own management company, Maux Management.

## COUNT I

Based upon the foregoing, Respondent is guilty of misrepresentation, dishonest dealing by trick, scheme or device, culpable negligence, or breach of trust in any business transaction in violation of Section 475.25(1)(b), Florida Statutes.

#### **COUNT II**

Based upon the foregoing, Respondent is guilty of having operated as a broker while licensed as a sales associate in violation of Section 475.42(1)(b), Florida Statutes and, therefore, in violation of Section 475.25(1)(e), Florida Statutes.

#### COUNT III

Based upon the foregoing, Respondent is guilty of having collected any money in connection

with any real estate brokerage transaction except in the name of the employer and with the express consent of the employer and is guilty of commencing or maintaining any action for a commission or compensation against any person except his registered employer in violation of Section 475.42(1)(d), Florida Statutes and, therefore, in violation of Section 475.25(1)(e), Florida Statutes.

#### **COUNT IV**

Based upon the foregoing, Respondent is guilty of failure to immediately place with the registered employer any money, fund, deposit, check or draft entrusted to him as agent of the registered employer in violation of Rule 61J2-14.009 of the Florida Administrative Code and Section 475.25(1)(k), Florida Statutes and, therefore, in violation of Section 475.25(1)(e), Florida Statutes.

WHEREFORE, Petitioner respectfully requests the Florida Real Estate Commission, or the Department of Business and Professional Regulation, as may be appropriate, to issue a Final Order as final agency action finding the Respondent(s) guilty as charged. The penalties which may be imposed for violation(s) of Chapter 475 of the Florida Statutes, depending upon the severity of the offense(s), include: revocation of the license or registration or permit; suspension of the license, registration or permit for a period not to exceed ten (10) years, imposition of an administrative fine of up to \$5,000 for each count or offense; imposition of investigative costs; issuance of a reprimand; imposition of probation subject to terms including, but not limited to, requiring the licensee, registrant or permitee to complete and pass additional real estate education courses; publication; or any combination of the foregoing which may apply. *See* Section 475.25(1), Florida Statutes and Florida Administrative Code Rule 61J2-24.001. The penalties which may be imposed for violation(s) of Chapter 455 of the Florida Statutes, depending upon the severity of the offense(s),

include: revocation of the license, registration, or permit; suspension of the license, registration, or permit for a period not to exceed ten (10) years; imposition of an administrative fine of up to \$5,000 for each count or offense; imposition of investigative costs; issuance of a reprimand; imposition of probation subject to terms including, but not limited to, requiring the licensee, registrant, or permitee to complete and pass additional real estate education courses; publication; restriction of practice; injunctive or mandamus relief; imposition of a cease and desist order; or any combination of the foregoing which may apply. *See* Section 455.227, Florida Statutes and Florida Administrative Code Rule 61J2-24.001.

# **ATTORNEY FOR PETITIONER**

Patrick J. Cunningham
Senior Attorney
Florida Bar N° 469221
Division of Real Estate
Department of Business and
Professional Regulation,
Legal Section - Suite N 801
Hurston Bldg. North Tower
400 West Robinson Street
Orlando, Florida 32801-1757
(407) 481-5632
(407) 317-7260 FAX

/k PCP: RD/HF 1/08

# **NOTICE TO RESPONDENTS**

PLEASE BE ADVISED that mediation under Section 120.573 of the Florida Statutes, is not available for administrative disputes involving this type of agency action.

PLEASE BE FURTHER ADVISED that pursuant to this Administrative Complaint you may request, within the time allowed by law, a hearing to be conducted in this matter in accordance with Sections 120.569 and 120.57 of the Florida Statutes; that you have the right, at your option and expense, to be represented by counsel or other qualified representative in this matter; and that you have the right, at your option and expense, to take testimony, to call and cross-examine witnesses, and to have subpoena and subpoena duces tecum issued on your behalf if a formal hearing is requested.

PLEASE BE FURTHER ADVISED that if you do not file an Election of Rights form or some other responsive pleading with the Petitioner within twenty-one (21) days of receipt of this Administrative Complaint, the Petitioner will file with the Florida Real Estate Commission a motion requesting an informal hearing and entry of an appropriate Final Order which may result in the suspension or revocation of your real estate license or registration. Please see the enclosed Explanation of Rights and Election of Rights form.

June 27 2006

# Atta. Juan Chavarnaga

Section 8 División of Housing Urban Development Broward County

To whom it may concern,

Please let it be know that I have not athorized Juan Chavarriaga or Weston International Realty or any other company to collect the rent from the tenant or make contracts on my behalf. The only person authorized to do so is Alejandro Ochoa with Brickell Investment Realty 786-2802160. If you have any questions please feel free to contact me at 011-573-11-227-0752. Also please advise who to direct any questions to with the monies he has collected from your agency and I have never recieved.

Thank you

Claudia Mejia Claudiammejia/hotmail.com

Property Address: 4381 SW 133 Lane Miramar Florida 33027

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FROM : Maux. Enterprises

FAX ND. :954 721 1855

unless Landlord gives Terrant written notice of a change. At notices of such names and addresses or changes thereto shall be

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	a copy of the notice at Premises.	he Promises. If Tenant is absent from the Premises, 4
UTILITIES. Teneri shall pay for all using Isling utility connections to the Premise		rm and connection charges and deposits for activating
MAINTENANCE, Landiord shall be re	sponsible for compliance with Sec	otion 83.51, Florida Statutes, and shall be responsible for
entenance and repair of the Premista,	uniew otherwise stated below:	
ill in each blank space with "Landlord" f	or Landiard or "Tenent" for Tenent.	it, if left blank, Landlord will be responsible for the item):
D roots	windows	acteans
Tsleps	doors	licors
porches	O exterior waits	D foundations
plumbing	oncomes contactors	running water
heating	hot water  licerical system	O cooling
tocks and keys  smoke detection device	The state of the s	T garbage removal/outside receptacles
	oo, rosothee, ents and tiedbugs	T extermination of wood-destroying organisms
T lawn/shrubbery	pool/spa/not trib	water treatment
O filters(specify)		T certificia T interior walls
ther (epocity). Teuchet to pe	y any Pepoil un	ide UT 200. Terrount Bergou soble for
		Switters kertallation.
ment shall notify		
	neg Karangan sanggan panggan sa	
	and	pulgation mather) of maintenance
nd repair requests		
		a all or any part of the Premises without first obtaining the
andiord's witten approval and consent t		
2. KEYS AND LOCKS. Landlord shall it	intent Tenant 12. If of sets of key	ys to the chirolling of mail box keys
there is a horricowner's association, To		
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t end of Lease Tarm, all items specified  LEAD-BASED PAINT. LI Check and and warning Statement	in this Paragraph shall be returned	ed to(If left blank, Landlord at Landlord's address).  t before lanuary 1, 1975
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FOX NO. :954 721 1855

Mar. 29 2006 06:48PM P4

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FROM : Maux Enterprises

FRX NO. :954 721 1855

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17. USE OF THE PREMISES. Tenent shall use the Premises for residential purposes. Tenent shall have exclusive use and right of possession to the dwelling. The Promised shall be used so as to comply with all state, county, municipal taws and ordinances, and all covenants and restrictions affecting the Promises and all rules and regulations of homeowners' essociations affecting the Premises. Tenant may not paint or make any alterations or improvements to the Premiess without first obtaining the Landlord's written consent to the alteration or improvement. Any improvements or alterations to the Premiose made by the Tenent shall become Landont's property. Tenant agrees not to use, keep, or store on the Primises any dangernize, explosive, toxic moterial which would increase the probability of fire or which would increase the cost of insuring the Premines.

10. RISK OF LOSSINGUHANCE.

A. Landord and Tenent shall each be responsible for loss, damage, or injury caused by its own negligence or within conduct.

B. Tonant should carry incurance covering Tenant's personal property and Tenant's Eablity Insurance.

19. DEFAULTBRIBINEDIES. Should a party to the Lease 19% to fulfill their responsibilities under the Lease or need to determine whether there has been a default of the Lease, refer to Part II, Chapter 83, entitled Florida Residential Landord and Tenent Act which contains information on same, and/or remedies available to the porties.

20. SUBORDINATION. The Lease is subordinate to the tien of any mortgage encumbering the tee title to the Promises from time to

- 21. LEBIS. Tenent shall not have the light or authority to encumber the Premises or to permit any person to claim or essent any lien for the improvement or repair of the Fremises made by the Tenant. Tenant shall notify all parties performing work on the Premises at Tenant's request that the Leane does not allow any liene to attach to Landon's interest.
- 22. RENEWAL/EXTENSION. The Lease can be renewed or extended only by a written agreement signed by both Landlord and Tenent, but the term of a renewel or extension together with the original Lease Term may not exceed one year. A new lease is required for each year. . . .
- 23. TENANT'S PERSONAL PROPERTY. BY SECURIC THES MENTAL AGREGIMENT, TYMANT AGREES THAT UPON SURREN-DER OR ABANDONMENT, AS DEFINED BY THE FLORIDA STATUTES, LANDLORD SHALL NOT BE LIABLE OR RESPONSI-BLE FOR STORAGE OR DISPOSITION OF TENANT'S PERSONAL PROPERTY.
- 24. TEMANT'S TELEPHONE NUMBER. Tanant shall within 6 business days of obtaining telephone services at the Promises, sand writton notice to Landford of Tenant's telephone numbers at the Premises.
- 25. ATTORNEY'S FEES, in any igneral brought to enforce the Lasse or under applicable law, the party who wins may recover its reasoneble court coals and attorney's fees from the party who loses.
- 26. MISCELLANEOUS.
  - A. Time is of the essence of the Leaber.
  - El. The Lease shall be binding upon and for the benefit of the heirs, personal representatives, successors, and permitted assigns of Landlard and Tenent, subject to the sequiromous specifically mandoned in the Legan. Whenever used, the singular number shall include the plural or singular and the use of any gender shall include all appropriate genders.
  - C. The agreements contained in the Lease set forth the complete understanding of the parties and may not be changed or terminated oraity.
  - D. No agreement to accept surrender of the Premises from Tenant will be valid unless in writing and algred by Landford.
  - E. All questions concerning the meaning, execution, construction, effect, validity, and enforcement of the Lacse shall be determined purpuent to the laws of Florida.
  - F. A facelynile copy of the Leuse and any signatures hereon shall be considered for all purposes originals.
  - G. As required by test, Landord makes the following disclosure: "RADON GAS," Fladon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of recon that exceed federal and state guitelines have been found in buildings in Florida. Additional information regarding radon and radon builting may be obtained from your county health department.

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ADMINISTRATIVE COMPLAINT EXHIBIT # 3 FROM : Maux Enterprises

FAX NO. :954 721 1855

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