

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
ERIBERTO MALACARA &	:	FINAL DECISION AND ORDER
CPAD GROUP, LLC	:	
d/b/a MORE HOMES REALTY,	:	LS0706287REB
RESPONDENTS.	:	

Division of Enforcement case files 03 REB 174, 05 REB 008, and 06 REB 036

The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

Eriberto Malacara
3015 17th St.
Racine, WI 53405

CPAD Group LLC d/b/a More Homes Realty
2401 Lathrop Ave.
Racine, WI 53405

Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Real Estate Board (“Board”). The Board has reviewed this Stipulation and considers it acceptable. Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Eriberto Malacara is licensed in the State of Wisconsin as a real estate broker having license #90-50013. This license was first granted to him on 11/04/99. Mr. Malacara’s most recent address on file with the Department of Regulation and Licensing (“Department”) is 3015 17th St., Racine, WI 53405.

2. CPAD Group LLC d/b/a More Homes Realty is licensed as a real estate “business entity” per sec. 452.01(3j), Wis. Stats., having license #91-700369 which was first granted on 07/26/2000. The most recent address on file with the Department of Regulation and Licensing for CPAD Group, LLC is 2401 Lathrop Ave., Racine, WI 53405. Mr. Malacara is the real estate broker, president, and “business representative” per sec. 452.01(3k), Wis. Stats., of CPAD Group, LLC.

3. On or about January 22, 2004, Mr. Malacara was the subject of a disciplinary action by the Wisconsin Real Estate Board which resulted in Mr. Malacara’s broker’s license being limited for a period of two years. The limitation required Mr. Malacara to be supervised by a licensed broker and to provide monthly reports to the Department. Mr. Malacara was also ordered to complete the 36 hour pre-licensing real estate broker’s courses and to pay costs and a forfeiture. A copy of this Order is attached as **Exhibit 1** and is incorporated herein by this reference. Mr. Malacara satisfied the requirements of the order [though see paragraph 23 below], and the limitations were removed from his license on April 13,

With Regard to the Complaint in Case 03 REB 174

4. In January 2002, Lucy Estrada and her husband were referred to Mr. Malacara by a mortgage company to purchase a home. Ms. Estrada was qualified for a \$50,000.00 loan. Ms. Estrada contacted Mr. Malacara and he told her that he had a home that might work for her. The property was located at 1832 Howe Street in Racine, Wisconsin, and was owned by CPAD Group. The sale price of the home was \$63,900.00. Mr. Malacara explained to Ms. Estrada that the sellers were willing to put \$2,000.00 toward closing costs leaving a balance of \$61,900.00.

5. Mr. Malacara disclosed his interest in CPAD Group to Ms. Estrada, but he did not do so in writing, nor did he obtain prior written consent from Ms. Estrada, nor did he explain that he was personally included among “the sellers” of the house who were willing to credit \$2,000 of the purchase price toward closing costs.

6. Mr. Malacara spoke with the loan company to whom Ms. Estrada had applied and learned that she qualified for a loan that would cover 80% of the cost of the Howe St. property. The representative from the loan company explained to Ms. Estrada that if the price of the property was raised to \$68,900.00 then she would be able to obtain a loan for \$55,000.00. Ms. Estrada did not think she could afford the higher price but the representative from the loan company explained that the selling price of \$68,900.00 would be used in order for her to get a bigger loan, but the effective price to Ms. Estrada would still be \$61,900.00.

7. Mr. Malacara explained to Ms. Estrada that she could apply to the City of Racine for a loan to put towards a down payment which would also be based on a percentage of the selling price.

8. On or about January 8, 2002, Mr. Malacara drafted a Residential Offer To Purchase for the Howe St. property. The purchase price would be \$68,900.00. Closing was to take place no later than January 31, 2002. Lines 180 through 183 read: “Sellers to give buyers up to \$2000.00 to be used for points, closing cost, and pre-pays. 2) Seller to hold a second for \$8,600.00 amortized for 15 years with a balloon payment of \$6734.77 in two years. Interest shall be 7% with a monthly payment of \$77.30.” CPAD Group, by Mike Contreras, signed as owner of the property. A copy of the Residential Offer To Purchase is attached as **Exhibit 2** and is incorporated herein by reference.

9. Another Residential Offer To Purchase for the Howe St. property was forwarded to the Department signed by Ms. Estrada as the buyer and CPAD Group as the seller. This Offer does not contain the language regarding “Seller to hold a second for \$8,600.00...” A copy of the Residential Offer To Purchase is attached as **Exhibit 3** and is incorporated herein by reference.

10. Mr. Malacara was unable to forward to the Department a copy of the Listing Agreement, stating that the Listing Agreement was lost in a move from one facility to another.

11. The transaction did not close on January 31, 2002. Closing was rescheduled to February 15, 2002, but Mr. Malacara did not draft an Amendment to the Residential Offer to Purchase changing the closing date.

12. Ms. Estrada still did not have enough money to purchase the home, and Mr. Malacara told her that he could arrange for her to get a loan for \$7,300, \$5,000 of which would be paid back at closing. On or about February 9, 2002, Ms. Estrada signed a Personal Loan Agreement with Mr. Malacara agreeing to repay \$7,300.00 within seven days from February 9, 2002. A copy of the Personal Loan Agreement is attached as **Exhibit 5** and is incorporated herein by reference.

13. On or about February 12, 2002, Ms. Estrada signed a note which stated: “To Whom It May Concern, I have been saving money for a long time to buy a house, however I had to keep the money in my house. My broker told me that I needed to deposit the money at the bank in order for the bank to verify that I have the money, so I deposited on February 11, 2002. Thank you for your time and consideration.” The money deposited at that time was most likely the \$7,300 obtained as a loan from Mr. Malacara three days earlier. A copy of the note dated February 12, 2002, is attached as **Exhibit 4** and is incorporated herein by reference.

14. On or about February 15, 2002, Ms. Estrada signed a Promissory Note for the sum of \$5,168.00 from the City of Racine. A copy of the Promissory Note from the City of Racine is attached as **Exhibit 6** and is incorporated herein by reference.

15. The transaction closed on February 15, 2002.

16. Sometime after closing Mr. Malacara on one occasion went to Ms. Estrada's home and asked for repayment of the \$2,300.00.

17. In response to an investigative request from the Department, Mr. Malacara stated on December 1, 2003, "Lucy still did not have any additional money, so I told her I may be able to get a gift for her to be used for the additional money needed for the down payment. She was given \$7,000 I told her she would have to sign an agreement that she would use this money for the down payment and if the closing didn't happen, she would return it to the donor. She did sign it. This may be where the confusion is. She may not remember that it was signed after the closing as being paid. The only time I mentioned that she could be taken to court was if she didn't pay it back if we didn't close."

18. The Department obtained a copy of the \$7,300 Promissory Note from the Racine Fair Housing Department. Near the bottom of the agreement a handwritten note reads; "Paid \$5,000.00 on 2/15/02 balance due \$2,300.00." A copy of the Personal Loan Agreement is attached as **Exhibit 5** and is incorporated herein by reference.

19. In response to a later investigative request from the Department showing him a copy of the Promissory Note, Mr. Malacara endorsed a copy of the \$7,300 promissory note as follows: "Paid in full - 5-24-06. I still can't find a copy of this note, but I am marking Paid in Full because she doesn't owe this amount."

20. In July of 2002, Ms. Estrada's mortgage company started foreclosure proceedings against her and she no longer owns the Howe St. property.

With Regard to the Complaint in Case 05 REB 008

21. On August 30, 2004, Mr. Malacara prepared an Offer to Purchase on behalf of Michael and Debra Perine for property at 1823 Marquette Street in Milwaukee.

22. The Marquette Street property was owned by Mr. Malacara's brother, Richard Malacara. Mr. Malacara disclosed this to the buyers orally at the time the offer was written, but it was not disclosed in writing until September 30, 2004, and Mr. Malacara never obtained written consent from the Perines.

23. At the time of the Offer, Mr. Malacara was under an Order of the Real Estate Board that required him to "provide to the supervising broker the original, full and complete copy of each document related to the listing, rental, purchase, sale, trade or other transfer of an interest in real estate or business assets, either drafted by Respondent or received by Respondent" The Offer to Purchase provided by Mr. Malacara with his transaction documents was prepared by him on 8/30/04, signed by the Perines on 8/31/04, and accepted and signed by Richard Malacara. The purchase price was \$85,900 with earnest money of \$4,200. Attorney Guadalupe Villareal, Mr. Malacara's supervising broker, sent a report to the Department on September 12, 2004, in which he included a copy of an OTP for the house the Perines bought. The document supplied by Mr. Villareal differed from the one supplied by Malacara. The one supplied by Villareal was prepared for the Perines by Malacara on 8/30/04 but it has no signatures. The purchase price was \$82,900 with earnest money of \$300.

24. Mr. Malacara did not supply copies of the property condition report and the lead-based paint report to the Perines. The file copies supplied to the Department by Mr. Malacara do not contain the Perines' signatures.

25. Mr. Malacara told the buyers certain items would be taken care of before they moved in, but he did not reduce the specifics to writing and he left the responsibility for repairs and cleaning to his brother. The items were not taken care of prior to closing, though Mr. Malacara later corrected many problems himself and reimbursed the buyers for their costs cleaning up the basement.

With Regard to the Complaint in Case 06 REB 036

26. In May of 2003, David Borzynski made an Offer to Purchase for property at 1027 Albert Street in Racine owned by CPAD Group LLC. The Offer to Purchase was prepared by Mr. Malacara and CPAD Group LLC at the request of Mr. Borzynski.

27. Mr. Malacara acted as a principal in the transaction rather than as a real estate broker, but he did not formally disclose his status as a real estate licensee.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to sec. 452.14, Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

2. In Case No. 03 REB 174, respondent Eriberto Malacara is subject to discipline for the following violations:

a. Wis. Stats. sec. 452.133 (3) (b) and Wis. Adm. Code sec. RL 24.05 (2) by not disclosing his interest in CPAD Group in writing.

b. Wis. Adm. Code sec. RL 15.04 by failing to retain records.

c. Wis. Stats. sec. 452.133(1)(a) and 452.14 (3) (k), and Wis. Adm. Code sec. RL 24.03 (2) (b) by not disclosing to the loan company that he personally lent \$7,300 to Ms. Estrada just prior to closing, and by advising her to deposit it at her bank as if it were money she had saved.

3. In Case No. 05 REB 008, respondent Eriberto Malacara is subject to discipline for the following violations:

a. Wis. Stats. sec. 452.133 (3) (b) and Wis. Adm. Code sec. RL 24.05 (2) by not obtaining written consent to act in a transaction in which his brother had an interest.

b. Wis. Adm. Code sec. RL 24.17 (3) by violating a board order.

c. Wis. Stats. sec. 452.133 (1) (b) and Wis. Adm. Code sec. RL 24.17 (1) by not supplying copies of the Property Condition Report and the Lead-Based Paint Report to the buyers.

d. Wis. Adm. Code RL 24.08 by failing to put all agreements in writing, specifically the agreement to repair certain items prior to closing.

4. In Case No. 06 REB 036, respondent Eriberto Malacara is subject to discipline for failing to disclose his license status and intent to act in the transaction as a principal, contrary to section RL 24.05 (5), Wis. Admin. Code.

5. Respondent CPAD Group LLC d/b/a More Homes Realty is subject to discipline as a business entity for the acts and omissions of Eriberto Malacara as identified above pursuant to Wis. Stats. sec. 452.14 (4).

ORDER

NOW, THEREFORE, IT IS ORDERED that the attached Stipulation is hereby accepted.

IT IS FURTHER ORDERED that the real estate broker's license issued to Eriberto Malacara shall be **SUSPENDED** for a period of 90 calendar days, starting on the 10th business day after the date of this order. The suspension shall terminate automatically at the end of the 90-day period without further action of the Board.

IT IS FURTHER ORDERED that starting on the date the suspension is terminated, Eriberto Malacara's real estate broker's license is hereby **LIMITED** as follows:

Mr. Malacara must place in writing all agreements regarding cleaning and repair of real estate, listing specific tasks and time frames.

This limitation shall continue for a minimum of two years, at which time Mr. Malacara may petition the Board for its removal.

IT IS FURTHER ORDERED that within six months of the date of this Order, Eriberto Malacara must successfully complete 15 hours of continuing education in topics relevant to the practice of real estate, one topic of which must be conflicts of interest, at an educational institution approved by the Department of Regulation and Licensing. Eriberto Malacara shall submit proof of successful completion in the form of verification from the institution providing the education to the following address:

Department Monitor

Department of Regulation and Licensing,

PO Box 8935, Madison, WI 53708-8935.

Fax (608) 266-2264

Tel. (608) 261-7904

None of the education completed pursuant to this order may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED that Eriberto Malacara shall pay a forfeiture of **\$1,000** and costs of this matter in the amount of **\$6,906.69** within 90 days after the date of this order. Payment shall be made by certified check or money order, payable to the Wisconsin Department of Regulation and Licensing and sent to the Department Monitor. In the event Eriberto Malacara fails to pay the costs and the forfeiture within the time and in the manner as set forth above, Eriberto Malacara's real estate broker's license shall be suspended without further notice to the Respondent, without further hearing, and without further Order of the Board, and said suspension shall continue until the full amount of said costs and forfeiture have been paid to the Department of Regulation and Licensing.

IT IS FURTHER ORDERED that a failure to successfully complete the educational requirements in the manner set forth or a violation of any of the terms of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license; the Board in its discretion may in the alternative impose additional conditions and limitations or other discipline.

IT IS FURTHER ORDERED that Respondent **CPAD Group LLC d/b/a More Homes** license #91-700369 is hereby **REPRIMANDED**.

IT IS FURTHER ORDERED that files 03 REB 174, 05 REB 008, and 06 REB 036 be, and hereby are, closed.

Dated this 28th day of June, 2007.

WISCONSIN REAL ESTATE BOARD

By: Peter A. Sveum
A member of the Board