BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of: THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, v. RAUL AVILA & THE AVCORP GROUP, Respondent.	OAH No. L2004090416 DECISION

The attached Proposed Decision of the Administrative Law Judge is adopted by the Commissioner of Corporations as its decision in the above-entitled matter.

This Decision shall become effective on 8/3/05.

IT IS SO ORDERED: 8/3/05

WAYNE STRUMPFER
Acting Corporations Commissioner

State of California - Department of Corporations

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order issued Against: RAUL AVILA & THE AVCORP GROUP, Respondents.	OAH Number L2004090416

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at Los Angeles, California on December 15, 2004, February 22 and 23, 2005, and April 12, 2005.

Corporations Counsel Marlou De Luna represented complainant.

Respondent, Raul Avila, personally appeared. The Avcorp Group appeared through an officer of the corporation, Miriam Avila. Both Raul Avila and the Avcorp Group were represented by Glenn W. Calsada, Esq.

Oral and documentary evidence was received and the matter was submitted on April 12, 2005.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. On December 3, 2003, William P. Wood (complainant) issued a Desist and Refrain Order Against respondents while acting in his official capacity as California Corporations Commissioner, Department of Corporations (the department), State of California. The Desist and Refrain Order, issued pursuant to Corporations Code (Code) section 25532, directed respondents to cease the further unlawful offers or sales of securities in the State of California.

Respondents were served with the Desist and Refrain Order on December 8, 2003. Respondents timely requested a hearing, and the instant hearing ensued.

2. The Avcorp Group (respondent Avcorp) is a d.b.a. of AFG Funding, Inc., a licensee of the California Department of Real Estate. At all relevant times respondent Avcorp was conducting real estate business at 2421 West Beverly Blvd., Montebello, California.

3. At all relevant times, Raul Avila (respondent Avila), an individual, worked out of respondent Avcorp's offices, 2421 West Beverly Blvd., Montebello, California. Respondent Avila had his own office space in the Avcorp building with wall hangings indicating he was associated with respondent Avcorp. Respondent Avila further led the investors who form the basis of the present action to believe that he was chairman of the Avcorp Group.

4. The instant action concerns transactions between respondents and two individuals, Arthur Cordova (Cordova) and Enrique Munoz (Munoz), during the time period from 1999 through 2003. The Factual Findings relevant to the transactions between respondents and Cordova and Munoz are described below under separate sub-headings.

Cordova Transactions:

5. During the later part of 1998, Cordova became interested in refinancing his house as he was "upside down" on his current home loan. One of Cordova's friends recommended that Cordova talk to respondent Avila about refinancing his home. Cordova contacted respondent Avila and explained the situation. Respondent Avila told Cordova that he wanted to see Cordova's house. Cordova arranged to meet with respondent Avila at Cordova's home during the first part of 1999. Respondent Avila and his wife, Miriam, arrived at Cordova's home and discussed the refinancing. During the meeting respondent Avila gave Cordova a business card that led Cordova to believe that respondent Avila and Miriam were representing their realty and management group, Avcorp Group/respondent Avcorp. Subsequently, Cordova met several times with respondent Avila at respondent Avcorp's offices in Montebello.

6. Respondent Avila, acting as a representative of respondent Avcorp, told Cordova that "they could work something out" with the property. Cordova withdrew enough money from his retirement account to pay the full amount of his home mortgage; however, respondent Avila convinced Cordova that it was better if they "worked something out with a second mortgage company and do a 'buy down'." After their initial discussion of a "buy down," respondent Avila approached Cordova with the suggestion that Cordova invest in "repo property."[1] Cordova declined respondent's suggestion and told respondent that he (Cordova) was not a risk taker.

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[1] "repo property" refers to repossessed property respondent Avila purchased, fixed-up, then resold.

7. On February 23, 1999, Cordova gave Miriam Escobar/Avila a cashier's check in the amount of $10,000.00 as a "good faith" deposit to commence the refinancing (refi.). Cordova received a "promissory note" indicating that he would receive $10,750.00 within 30 days of February 23, 1999. Cordova was not sophisticated in financial dealings and did not know why he was given a promissory note in exchange for the $10,000 he gave respondents to commence a refinancing.

8. On or about August 5, 1999, Cordova gave respondents another $8,600.00 toward the refi. Respondent Avila and his wife originally told Cordova the escrow for the refi would take 30 days. When Cordova asked why the escrow was taking so long respondent Avila's wife, Miriam, told Cordova that she had been sick and could not "process anything." Cordova was given another promissory note with an August 16, 1999 "deadline." On August 16, 1999, Cordova called respondent Avila and asked about the status of the refi. Respondent Avila's wife spoke with Cordova and told him they had encountered "more problems" and could not "meet the deadline." Thereafter, Cordova called respondent Avila weekly to check on the status of his refi. During the first part of 2000, Cordova spoke with respondent Avila and Avila's wife and was informed that the money he had given respondent Avila and respondent Avcorp was not placed in escrow; rather, respondents used the money to invest in rehab properties. Cordova was further informed that the "investment went bad" and "if things did not work out they [Avila and Avcorp] would make payments on the debt."

9. At the time of the instant hearing Cordova had only received approximately $1,500 - $2,000 of his money back from respondents.

10. Respondent Avila claims that he was working independently and was not representing respondent Avcorp. Respondent's claim; however, is belied by the evidence. Respondent Avila worked out of an office located in respondent Avcorp's office space in Montebello, California. Respondent Avila's wife, an Avcorp Group officer, was actively engaged in the Cordova transactions. Respondent, by and through his wife, his business card, his office wall hangings in the Avcorp Group offices, and by his express representations, held himself out as a representative of respondent Avcorp, thus exposing respondent Avcorp to liability for respondent Avila's actions.

Respondent Avila further claims that he and respondent Avcorp were not engaged in offering and selling securities in the form of investment contracts, promissory notes and/or evidences of indebtedness; rather, respondent Avila asserts that his transactions with Cordova were merely "personal loan" transactions. Again, respondent's assertions are belied by the evidence. Cordova's testimony establishes that he was deceived by respondent into thinking he was refinancing his home and engaging in a "buy down" of his current loan so that he would no longer be "upside

down" on his home mortgage. Cordova never knowingly or voluntarily entered into any personal loan transactions or investments with respondents.

11. The evidence, considered in its entirety, reveals that respondents issued Cordova securities in the form of promissory notes and that the securities were never qualified with the Commissioner; additionally, respondents did not file a claim for exemption from the qualification requirement embodied in Code section 25110. Additionally, in connection with the offer and sale of the securities, respondents made numerous, material misrepresentations, such as representing that Cordova's money was being placed in escrow and was being used for a "buy down" refinancing of his home. Furthermore, and respondents failed to disclose material facts to Cordova, such as the fact that Cordova's money was really being used for a speculative investment.

Munoz Transactions:

12. Munoz was told by a friend that respondent Avila was looking for investors to invest in real estate through respondent's company, Avcorp Group/respondent Avcorp. Munoz met with respondent at the Avcorp Group offices in Montebello. Respondent Avila told Munoz that he was chairman of the Avcorp Group and showed Munoz a "portfolio of properties." Respondent Avila told Munoz that he purchased HUD property, fixed the property up and then sold the property for "huge" profit. Respondent Avila introduced Munoz to his wife. Respondent Avila told Munoz there was "minimal risk" and that ultimately a non-profit organization purchased the rehabilitated property.

13. Munoz made his first investment with respondents on July 27, 2001. Munoz gave respondent Avila a cashier's check in the amount of $15,000 and received an "Escrow Demand" from respondent Avila. Respondent Avila represented to Munoz that the rehabilitated property was in the final stages of rehabilitation, that respondents had located a buyer, and that they were about to close escrow.

Between July 27, 2001 and September of 2001, Munoz made several similar investments with respondents. In each instance Munoz was told that the properties involved were in the final stages of escrow and he was given "Escrow Demands." In truth and in fact, either no escrows had been opened on the properties or the escrows had been cancelled/closed due to inactivity.[2] In connection with Munoz's investments respondents falsely represented that his investments were secured by real property when, in fact, deeds of trust securing the investments were never recorded.

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[2] Although an escrow had been opened on one of the properties listed on an "Escrow Demand", the escrow company never received a deposit, loan documents, or loan approval.

14. The misrepresentations respondents made to Munoz were misrepresentations of "material facts" within the meaning of Code section 25401 since they concerned matters that a "reasonable investor" would consider in deciding whether to invest.

15. The "Escrow Demands" were investment contracts/evidence of indebtedness and are included in the list of "securities" within the meaning of Code section 25019.

16. The securities offered and sold by respondents were "issuer transactions" within the meaning of Code sections 25010 and 25011.

17. Respondents' actions represented the offering and selling of securities within the State of California within the meaning of Code sections 25008 and 25017.

18. The Commissioner has not issued a permit or other form of qualification authorizing the offer and sale of the securities referred to herein in the State of California.

LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for upholding the Desist and Refrain Order because respondents' acts of making material misrepresentations of material facts, as set forth in Findings 5 through 18, constitute violations of Code section 25401.

2. Cause exists for upholding the Desist and Refrain Order because respondents' acts of selling unqualified securities, as set forth in Findings 5 through 18, constitute violations of Code section 25110.

3. The evidence, considered as a whole, establishes that respondents have continuously engaged in the offer and sale of securities without qualification and by making material misrepresentations since 1999 and will continue to engage in such conduct, conduct injurious to investors, unless the Desist and Refrain Order is upheld.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Desist and Refrain Order issued by the Commissioner on December 3, 2003 is upheld in its entirety.

Dated: May 16, 2005.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings