

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order
Against:

CAPITAL GROUP ONE, INC.; CRISTHIAN
GAMEZ, Also Known As CHRISTHIAN GAMEZ
MANRIQUEZ; ESPERANZA GONZALEZ,
ALFREDO GONZALEZ,

Respondents.

File No.: 8326

OAH No.: L2008020165

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated April 16, 2008, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter with the following technical and minor changes on the attached Errata Sheet pursuant to Government Code Section 11517(c)(2)(C).

This Decision shall become effective on July 22, 2008.

IT IS SO ORDERED this 21st day of July 2008.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

ERRATA SHEET

(Changes to Proposed Decision —CAPITAL GROUP ONE, INC.; CRISTHIAN GAMEZ, Also Known As CHRISTHIAN GAMEZ MANRIQUEZ; ESPERANZA GONZALEZ, ALFREDO GONZALEZ)

- (1) Throughout the Proposed Decision, the name "Gamaz" should be changed to "Gamez."
- (2) In the Proposed Decision on page 3, paragraph 12 of Factual Findings, line 5, strike "20,000 shares" and insert "2,000 shares."
- (3) In the Proposed Decision on page 3, paragraph 13 of Factual Findings, line 1, strike "GCO" and insert "CGO."
- (4) In the Proposed Decision on page 4, paragraph 21 of Factual Findings, line 7, strike "Gonzales" and insert "Gonzalez."

**BEFORE THE
DEPARTMENT OF CORPORATIONS
S T A T E O F C A L I F O R N I A**

In the Matter of the Desist and Refrain Order
Against:

CAPITAL GROUP ONE, INC.; CRISTHIAN
GAMEZ, Also Known As CHRISTHIAN
GAMEZ MANRIQUEZ; ESPERANZA
GONZALEZ, ALFREDO GONZALEZ,

Respondents.

File No.: 8326

OAH No.: L2008020165

PROPOSED DECISION

The hearing in the above-captioned matter was held on March 18, 2008, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. Complainant was represented by Joyce Tsai, Staff Counsel, Department of Corporations. There was no appearance by Respondents, despite notice; a request to continue the matter, made by Respondents on the evening of March 17, 2008, was denied for lack of good cause.

Evidence was presented and the matter submitted for decision on the hearing date. The Administrative Law Judge hereby makes his factual findings and legal conclusions, and orders, as follows.

FACTUAL FINDINGS

A. The Parties and Jurisdiction:

1. Complainant Preston DuFauchard, California Corporations Commissioner, issued a Desist and Refrain Order (DRO) against Respondents on November 29, 2007. He acted through Alan S. Weinger, Lead Corporations Counsel, Enforcement Division, Department of California (Department), who executed the DRO on Complainant's behalf. Complaint and Mr. Weinger were acting in their official capacity in issuing the DRO.

2. On January 11, 2008, Bruce S. Weiner, an attorney, an attorney, gave written notice to Complainant's s counsel that Respondents Capital Group One, Inc. Christian Gamaz,

and Esperanza Gonzales requested a hearing on the DRO. Thereafter, those Respondents waived the time for such a hearing, allowing the hearing to be set at a later date than required by law. On February 20, 2008, the Office of Administrative Hearings gave notice that hearing dates had been assigned in March 2008; that notice was communicated to Mr. Weiner and Ms. Tsai. On February 22, 2008, Complainant served a formal Notice of Hearing on Respondent's counsel, giving notice that the hearing in the above-captioned matter would be held on March 18 and 19, 2008, at the Office of Administrative Hearings, in Los Angeles.

3. At approximately 4:30 p.m, on March 17, 2008, Respondents Gamez and Esperanza Gonzalez, and Capital Group One, submitted a request for continuance, by facsimile transmission. The request was filed by the Respondents, and not their attorney. Respondents and their attorney failed to appear at the hearing. Mr. Weiner was contacted by telephone and he represented that he did not know why the Respondents claimed they could not appear, and that he was not going to appear, as he had never been properly retained.

4. There was no service upon Alfredo Gonzalez, who was named as a respondent, and Mr. Weiner did not appear for him, as he did for the other three respondents. Thus, jurisdiction to proceed in this matter was established against Capital Group One, Christian Gamez, and Esperanza Gonzalez, but not against Alfredo Gonzalez.

5. Respondent Capital Group One, Inc (CGO) is a California corporation with its principal place of business at 18000 Studebaker Road, Suite 700, Cerritos, California. It was incorporated in August 2005.

6. Respondent Cristhian Gamez, also known as Cristhian Gamez Manriquez (Gamez), is an individual who served as President and control person of CGO. He is also president of GMC Mortgage, Inc, a California corporation with its principal place of business at the same location as CGO.

7. Respondent Esperanza Gonzalez (Gonzalez) is Secretary of CGO and a control person thereof. She is married to Respondent Gamaz.

B. The Cuevas Transactions:

8. In approximately 2004, Respondent Gamaz met Josefina Cuevas (Cuevas). Gamaz offered to refinance Cuevas's home, and she entered into a transaction with him to do so. In the course of the transaction, Gamez asked Cuevas to lend him \$30,000 from the proceeds of the refinancing transaction, and she lent him that amount.

9. Thereafter, Gamaz told Cuevas that he knew of a house that was in

foreclosure, and that it was a good investment opportunity. He wanted to buy the property and to invest up to \$65,000 in it, so that it could be cleaned up, rented, or sold. Gamaz represented to Cuevas that there was \$200,000 equity in the property and that Cuevas would obtain a substantial return on her investment if she worked with him to purchase the property and improve it.

10. Cuevas agreed to invest \$65,000 in the property, located in Anaheim, California. Gamaz gave her paperwork indicating that title had been placed in her name; some of the paperwork was purportedly notarized by Respondent Gonzalez. Some months later, Cuevas went to the County of Orange, and learned that while the house had been in her name for a time, it had been sold to others by Gamaz, and he did not tell her of that fact.

11. In approximately January 2006, Gamaz asked Cuevas to invest in CGO. He claimed that he was only going to have ten shareholders in the company, so that profits would be divided only by ten people. He represented that CGO would invest in real estate. She agreed to buy three shares, for \$10,000 per share. She gave Gamaz \$30,000. Part of the money was paid directly to Gamaz, and another part, \$15,000, paid to GMC Capital, Inc., another firm controlled by Gamaz.

12. On or about March 21, 2007, CGO issued a stock certificate to Cuevas, indicating that she held 1,000 shares in that corporation. The stock certificate also indicated that the total authorized shares of CGO was 10,000 shares. Cuevas's share certificate was signed by Gonzalez as secretary of CGO, and by Gamez as president of the firm. Cuevas never received share certificates for the other 20,000 shares she purchased.

13. Cuevas has never received distributions of any type from GCO. She has not been repaid her loan, and she does not have title to the house in which she invested, nor did she receive her investment back. Further, she garnered no return on her investments with Respondents.

14. Respondents CGO and Gamaz induced Cuevas to enter into the loan transactions, the purchase of stock in CGO, and the purchase of the house through false statements of material facts, or through the omission of material facts which would be necessary, in light of the circumstances, to make Respondents' statements true. Such misrepresentations include, but are not limited to, the nature of the investments, the returns to be had on the investments, and the intentions of Respondents to perform their promises made in the course of the transactions.

C. The Moreno Transaction:

15. Dolores Moreno (Moreno) is the daughter of Cuevas. Moreno first met Respondent Gamez in approximately November 2004. He later asked her to invest in

CGO, offering one of ten shares (or ten percent) of the company for \$10,000. He promised that Moreno would share in the profits generated by CGO's investment activities, though he did not state an amount. He did state that profits generated by CGO, which would invest in real estate, would be paid on a quarterly basis, after the firm's accountant calculated costs and income, and profits from the venture.

16. Moreno paid \$10,000 for a share—her one-tenth of the CGO—but she did not receive a share certificate for many months. Finally, in March 2007, CGO issued a stock certificate to her, for 1,000 shares of the 10,000 shares authorized. Respondents Gamaz and Gonzalez signed the share certificate as officers of CGO.

17. Moreno never received any payments from CGO. She and Cuevas contacted Gamaz, but were put off with stories and excuses about why no profits could then be paid.

18. Gamaz had represented to Cuevas that he was licensed by the Department of Real Estate so that he could act as an agent in real estate transactions, but Moreno learned that he was not so licensed. Moreno was also led to believe that Respondent Gonzalez was licensed as a real estate salesperson or broker.

19. Moreno has never received any distribution of profits from CGO. She was induced to purchase shares in CGO by false statements of material fact made by Respondents, or by the omission of material facts which, in light of the circumstances, were necessary to make the statements true. Moreno relied on Respondents' statements and representations in making her investment.

D. The Rojas Transaction:

20. Miguel Rojas (Rojas) met Respondent Gamez in early 2005. Mrs. Cuevas is his mother. Rojas, like his mother and sister, was induced by Gamez to invest in CGO. Gamez told Rojas that he wanted a small group of investors or owners. He told Rojas that every three to six months CGO would pay profits to the investors.

21. Rojas invested \$10,000 in CGO, buying one share of the firm, as it was denominated by Respondents CGO and Cuevas; Rojas understood this to mean a one-tenth ownership interest in CGO. However, some months went by and Rojas did not receive a share certificate. He asked Gamez why there were no stock certificates or profits, and was told some vague story about conflicts and problems in the company. Eventually, Rojas did receive a share certificate for 1,000 shares, executed by Gomez and Gonzales as officers of CGO.

22. Rojas was then in the military and had been deployed to Iraq. Upon returning from duty, he contacted Gamez, inquiring about profits in the CGO venture, as none had been distributed. This was not a simple task, as Gamez was not readily

available to speak to investors; he was rarely in his office, and would not return phone calls. When Rojas could speak to Gamaz, the latter put him off with various stories about why no profits had been paid. Rojas has never received any distributions of profit from CGO.

23. Rojas was induced to buy shares of CGO by false statements of material fact made by Respondents, or by the omission of material facts which, in light of the circumstances, should have been disclosed to make Respondents' statements accurate.

E. The Torres Family Transactions:

24. Respondent Gamez entered into a series of transactions with Alberto Torres and Teresa Torres beginning in approximately February 2006. Mr. Torres (Alberto) is the father of Teresa Tones (Teresa). Later, Armando Gonzalez, Alberto's brother-in-law, became involved in the transactions.

25. Respondents, through Gamez, represented to Alberto, Teresa, and Alberto's wife that Respondents had an investment opportunity for them, involving investment in real estate. Respondents represented that it would yield a large return; that they could double their investment in a short time. In order to raise money, Alberto and his wife refinanced their homes, and Respondents Gamez and Gonzalez participated in that refinancing transactions. As a result, Alberto's home became heavily encumbered, and he was induced to enter into a loan at interest rates that he would be unable to pay. Teresa also agreed to refinance her property to raise money for the investment.

26. Initially, the Torres family was told the investment would be in the construction of a house, but after approximately two weeks Gamaz told them of a different project, which he represented would yield the same type of high return that he had previously described. That project involved real property located in Glendale, California. The property was described by Respondents to Alberto as a large lot with a single home. Gamez represented that the lot could be split, and that he had an architect working on the lot split. Gamaz represented the project would take about six months and he represented that the property had substantial equity, and that it could be acquired for a fraction of its value. Based on his statements, the Torres family invested over \$220,000 to purchase the property as an investment.

27. Gamez claimed at one point that he had paid \$40,000 to the architect to work on the lot split, but after the property was purchased, Teresa learned from the City of Glendale that the property could not be divided, and there was no evidence that an attempt had even been made by Gamez or an architect to split the lot; no papers were on file. When confronted with this information, Gamez refused to provide evidence that he had paid an architect for the lot split, and told various stories to explain the situation. Gamez made other misrepresentations regarding material

aspects of the transaction, including false statements and omissions of facts regarding the amount of debt service that would be incurred while the investors held the Glendale property.

28. The Torres family invested over \$220,000 in the Glendale property, and lost most, if not all, of their investment. Later, Gamez induced Armando Gonzalez to invest \$40,000 in a separate transaction, again through misrepresentations of material fact. However, he eventually refunded the money to Armando Gonzalez. They made their investments based on false statements of material facts or based on the omission of material facts, which, in light of the circumstances, were necessary to make the representations accurate.

29. Each sale of stock in CGO constituted the sale of a security to a California resident. In the course of each sale, Gamez made false representations regarding the profits to be had in the firm, which was a representation of a material fact. It is reasonably inferred that Gamez had no intent to share any profits, and it is reasonably inferred that he made the representations regarding profit for the investors without any belief in the truth of his statements, or he that he made such representations recklessly. Further, he withheld material facts from the purchasers, which omitted facts necessary, in light of the circumstances, to make the representations accurate.

30. The transactions wherein Respondents induced Cuevas, and the Torres family members to make investments in real estate constituted the formation of an investment contract. In inducing other parties to enter into these investment contracts Respondent Gamez made false representations of material facts, including such matters as the status of the title, the return to be garnered from the investment, and the steps to be taken by Respondents to bring the investment to fruition. When Cuevas and the Torres family members entered into the investment contracts, they were residents of California.

31. In all these transactions the Respondents acted together and in concert to induce the various California residents to invest in the schemes concocted by Gamez.

32. The investment contracts and sale of stock in CGO constituted the sales of securities in California in issuer transactions. The Department has not issued a permit or other form of qualification to Respondents which would allow them to offer or sell securities in California.

LEGAL CONCLUSIONS

1. The Commissioner has the jurisdiction to proceed in this matter against Respondents CGO, Gamez, and Gonzalez, pursuant to Corporations Code section

25532 and 25600, based on Factual Findings 1 through 7. However, jurisdiction to proceed against Alfredo Gonzelez has not been established, based on Factual Finding 4.

2. It is unlawful for any person to offer or sell any security in an issuer transaction in California unless that sale has been qualified pursuant to sections 25111, 25112, or 25113 of the Corporations Code, or unless the transaction or security is exempted or not subject to qualification pursuant to Corporations Code section 25100, et. seq. The burden of establishing an exemption is on the issuer of the security. This Conclusion is based on Corporations Code section 25110.

3. Respondents CGO, Gamez, and Gonzalez, have violated section 25110 of the Corporations Code by offering to sell, or by selling, securities in California that have not been properly qualified or exempted. This Conclusion is based on Legal Conclusions 1 and 2, and Factual Findings 8 through 32.

4. It is unlawful for any person to offer or sell a security in California by means of an oral or written communication which includes an untrue statement of material fact, or where material facts are omitted which would be necessary to make the statements made not misleading, in light of the circumstances where the statements are made., based on Corporations Code section 25401.

5. Respondents CGO, Gamez, and Gonzalez have violated section 25401 of the Corporations Code by offering to sell, or selling, securities in California by means of false and misleading statements of material fact, or by omitting to state material facts necessary to make the statements made not misleading in light of the circumstances. This Conclusion is based on Legal Conclusions 1 and 4, and Factual Findings 8 through 32.

6. Cause exists to order Respondents CGO, Gamez and Gonzalez to desist and refrain from the offer or sale of any unqualified securities within the State of California, or from the offer and sale of securities in the State of California through the use of untrue statements of material fact, or through the omission of material facts which would be necessary to make the statements made not misleading, in the light of the circumstances under which the statements are made, based on all the foregoing.

//

//

//

ORDER

The Desist and Refrain Order issued by the Commissioner to Respondents Capital Group One, Inc., Cristhian Gamez also known as Cristhian Gamez Mamiquez, and Esperanza Gonzalez, is hereby upheld, and the appeal from it is denied.

April 16, 2008

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings