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BUREAU OF REAL ESTATE

By

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Desist and Refrain Order Against:	)	BRE No. H-38596 LA
	)	
	)	OAH No. 2013050869
MARGARET VOSCANIAN,	)	Accounting #23
	)	
	)	
	)	
	)	
	)	

DECISION

The Proposed Decision dated August 9, 2013, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following correction is made to the Proposed Decision:

Page 1, Factual Findings 1, "Statement of Issues" is corrected to read "Desist and Refrain Order".

This Decision shall become effective at 12 o'clock noon on October 7, 2013.

IT IS SO ORDERED August 28, 2013.

REAL ESTATE COMMISSIONER

By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Order to Desist and Refrain Issued against: Margaret Voscanian, Respondent.	Case No. H-38596 LA OAH No. 2013050869

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on July 11, 2013.

James R. Peele, Staff Counsel, represented Complainant Wayne Bell, Real Estate Commissioner of the Bureau of Real Estate (Bureau).

Respondent Margaret Voscanian represented herself.

Oral and documentary evidence was received at the hearing, and the matter was submitted July 11, 2013.

On October 11, 2012, Complainant issued an order that Respondent desist and refrain from performing acts for which a real estate broker is required, and in particular from charging or collecting advance fees for services with respect to mortgage loan modifications or forbearance. For the reasons set out below, the order is affirmed.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued the Statement of Issues in his official capacity.

2. Respondent has never been licensed as a real estate broker or salesperson.

3. In 2009 respondent worked a loan officer for a loan company (the name of which she no longer remembers). She was also a homeowner in danger of defaulting on her mortgage. She paid fees to a firm called Universal Consulting Services to negotiate a modification of her mortgage loan. She also agreed with Universal Consulting — and in

particular Ana Escalante, who did the loan modification work at Universal Consulting — that if she would be paid an "incentive" for referring loan modification clients.

4. In March 2009, while working at her loan officer job, Respondent answered a call from a Syed Zaidi, a homeowner who was responding to Respondent's employer's radio advertisement for its refinancing services. Respondent told Zaidi that her company could not help him refinance because his loan balance exceeded his home's value. Instead, she referred him to Escalante at Universal Consulting. On March 28, 2009, Respondent took a Universal Consulting "Consumer Loan Modification and Services Agreement" to Zaidi's home, where Zaidi and his wife signed it, and Respondent collected an advance fee of $4,000. No services had been rendered when the payment was collected. The Commissioner of Real Estate had not approved the form of the contract. Respondent was neither a party to the contract nor a payee of the Zaidis' check, but Universal Consulting paid her about $750 when she obtained the Zaidis' payment and signatures on the contract.

5. The point of a loan modification is to replace an existing loan with a new loan from the same lender, by changing the principal balance, forgiving delinquent payments, lowering the monthly payment, extending the loan term, or some combination of those changes.

6. Respondent did not negotiate with the Zaidis' lender (Washington Mutual had held the mortgage, which was assumed by Chase Bank when Washington Mutual collapsed), but often acted as his contact with Universal Consulting and Escalante. In June 2009, Escalante left Universal Consulting, and took her loan modification operation to a company called LV Financial. She told Respondent that no one else at Universal Consulting did loan modifications, so Respondent took her own loan modification account to LV Financial. On Respondent's advice, the Zaidis did the same.

7. Respondent continued to exchange emails with Syed Zaidi, most of which were on the subject of why his loan modification had not been completed. In a May 6, 2009, email to Zaidi, Respondent wrote that his modification request had been submitted to the lender, and that "my underwriter [Escalante] is in constant contact with the company." In a June 8, 2009, email, she told Zaidi that her own loan had been modified to write off her delinquent amounts and reduce her monthly payment from $3,300 to $1,462. On August 8, 2009, Respondent wrote to tell Zaidi that Escalante "said your loan mod is getting wrapped up" and that it had taken five months to complete Respondent's own modification. In a September 14, 2009 email to Zaidi, Respondent wrote, "I am equally frustrated with the amount of time it has taken to modify your loan," and that "Chase-Wamu is the slowest company I have ever dealt with for loan modifications. I've received results for other clients in half the time and their loan mods were turned in after yours." This statement and one in another email indicate that Respondent had been involved with other clients of Universal Consulting or LV Financial, but there is no other evidence in the record about Respondent's other clients.

8. Respondent stopped corresponding with Zaidi after September 2009. Her only contact with him after that was an email she sent in June 2010, after she found out that he

had made another large payment to LV Financial. By that time, Respondent had concluded that Escalante was the "ringleader" of an operation that was not legitimate. In her email, she wrote that "the owners and operators of LV Financial have not performed as promised to me and countless other clients. They have closed down their doors, and they have not refunded me or my clients. I have at this point reported them to the CA District Attorney and FBI Loan Mod Fraud Division. I have turned over all of my paperwork, and believe me it's extensive." She testified at hearing that she lost the $6,000 she paid for loan modification services, and that Escalante was essentially charging money to accomplish what could be more easily accomplished if the mortgage debtors dealt directly with their lenders. She testified that she eventually had her mortgage modified by dealing directly with her lender (Zaidi did the same), but did not explain how her testimony jibes with her 2009 email implying that her loan modification was done in 2009 by Escalante. She also did not explain why, after being in contact with Zaidi for months, she did not warn him about Escalante and LV when she first concluded that Escalante was not running an honest operation.

LEGAL CONCLUSIONS

1. The Bureau has authority to issue an Order to Desist and Refrain if "a person has engaged or is engaging in an activity which is a violation of a provision of this part [the Real Estate Law, Bus. & Prof. Code, § 10000 et. seq.[1]] or which is a violation of a regulation of the commissioner adopted for the purpose of implementing any provision of this part." (§ 10086, subd. (a).)

2. Respondent's actions violated section 10130, which makes it unlawful for a person to act in the capacity of a real estate salesperson or broker without first obtaining a real estate license. A person acts as a real estate broker when the person solicits "borrowers or lenders . . . or collects payments or performs services for borrowers . . . in connection with loans secured directly or collaterally by liens on real property[.]" (§ 10131, subd. (d).) "A real estate broker is also a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property . . . or to obtain a loan or loans thereon." Section 10026 defines "advance fee" as a fee "collected by a licensee for services requiring a license . . . before fully completing the service the licensee contracted to perform or represented would be performed.") The loan modifications for which Respondent solicited customers (Factual Findings 4 and 7) were secured loan transactions. (Factual Finding 5.) Thus Respondent solicited borrowers for services in connection with loans secured by real property, and collected advance fees for employment undertaken to obtain loans secured by real property. (Factual Finding 4.)

3. Respondent's collecting advance fees also violated CCR section 2970, subdvision (a), which requires any person "who proposes to collect an advance fee as defined

[1] Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to title 10 of the California Code of Regulations.

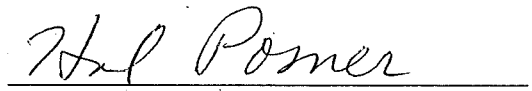
in Section 10026" to submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use." Respondent collected an advance fee from the Zaidis and had them sign an advance fee contract that had not been submitted to the Commissioner for approval. (Factual Finding 4.)

4. Respondent maintains that she did not not know she was acting in a capacity that required a license, that she did not intend to harm any of her clients, and that she was victimized by Escalante along with everyone else. The evidence is equivocal on those points, but even if it were clearly as Respondent contends, none of her contentions is a defense to issuing an Order to Desist and Refrain. Respondent's violated the Real Estate Law because her actions required a real estate license, and she violated the Bureau's regulations by presenting an unapproved advance fee contract and collecting money under that contract. The evidence is sufficient to warrant an Order to Desist and Refrain.

ORDER

The Order to Desist and Refrain issued against Respondent Margaret Voscanian is affirmed.

DATED: August 9, 2013



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings

Department of Real Estate
320 West Fourth Street, Ste. 350
Los Angeles, California 90013

(213) 576-6982

FILED

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DEPARTMENT OF REAL ESTATE
BY: [signature]

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

To:	No. H-38596 LA
MARGARET VOSCANIAN,	ORDER TO DESIST AND REFRAIN

The Commissioner (Commissioner) of the California Department of Real Estate (Department) caused an investigation to be made of the activities of MARGARET VOSCANIAN ("VOSCANIAN"). Based on that investigation, the Commissioner has determined that VOSCANIAN has engaged in or is engaging in acts or is attempting to engage in the business of, acting in the capacity of, and/or advertising or assuming to act as a real estate broker in the State of California within the meaning of Business and Professions Code Sections 10131(d) (soliciting, negotiating and performing services for borrowers in connection with loans secured by real property) and 10131.2 (advance fee handling).

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In addition, based on that investigation, the Commissioner has determined that VOSCANIAN has engaged in acts or is attempting to engage in practices constituting violations of the California Business and Professions Code ("Code") and/or Title 10, California Code of Regulations ("Regulations"). Based on the findings of that investigation, set forth below, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

FINDINGS OF FACT

1. At no time herein mentioned has VOSCANIAN been licensed by the Department as a real estate broker.

2. At the time set forth below VOSCANIAN solicited borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: engaged in the business of, acted in the capacity of, or advertised a loan modification and negotiation service and advance fee brokerage soliciting, offering to negotiate or perform loan modification services with respect to loans which were secured by liens on real property for compensation or in expectation of compensation and for fees collected in advance of the transaction.

3. During 2009 and 2010, VOSCANIAN solicited an agreement with Syed and Fozia Z. for loan modification and negotiation services on their existing mortgage on their home located at 9103 Brookshire Ave., Downey, California.

4. VOSCANIAN demanded and received advance fees from Syed and Fozia Z. for the activities described above.

CONCLUSIONS OF LAW

5. Based on the information contained in Paragraphs 1 through 4, above, VOSCANIAN violated Section 10085 of the Code and Regulation 2970, by not having an approved advance fee agreement on file with the Department.

6. Based on the information contained in Paragraphs 1 through 4, above, VOSCANIAN violated Section 10130 of the Code by engaging in the activities without first obtaining a broker license from the Department.

DESIST AND REFRAN ORDER

Based on the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, it is hereby ordered that:

(A) MARGARET VOSCANIAN immediately desist and refrain from: performing any acts within the State of California for which a real estate broker license is required, unless you are so licensed.

IT IS FURTHER ORDERED THAT MARGARET VOSCANIAN immediately desist and refrain from:

1. charging, demanding, claiming, collecting and receiving advance fees, as that term is defined in Section 10026 of the Code, in any form, and under any conditions, with respect to the performance of loan modifications or any other form of mortgage loan forbearance service in connection with loans on residential property containing four or fewer dwelling units (Code Section 10085.6).

2. charging, demanding, claiming, collecting and receiving advance fees, as that term is defined in Section 10026 of the Code, for any of the other real estate related services offered to others, unless and until MARGARET VOSCANIAN demonstrates and provides evidence satisfactory to the Commissioner she:

(a) has an advance fee agreement which has been submitted to the Department and which is in compliance with Section 10085 of the Code and Section 2970 of the Regulations;

(b) has placed all previously collected advance fees into a trust account for that purpose and is in compliance with Section 10146 of the Code; and

(c) has provided an accounting to trust fund owner-beneficiaries from who advance fees have previously been collected in compliance with Section 10146 of the Code and Section 2972 of the Regulations.

DATED: Oct. 11, 2012

REAL ESTATE COMMISSIONER

By WAYNE S. BELL
Chief Counsel

Notice: Business and Professions Code Section 10139 provides that "Any person acting as a real estate broker or real estate salesperson without a license or who advertises using the words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars ($20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars ($60,000)."

cc:

JRP:PH