

**FILED**

**JAN 12 2015**

BEFORE THE BUREAU OF REAL ESTATE

**BUREAU OF REAL ESTATE**

STATE OF CALIFORNIA

By *Lyndal Werner*

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In the Matter of the Accusation of )  
 SAN VICENTE REAL ESTATE SERVICES INC., )  
 and ARNOLD KRISTIAN FRY, )  
 Respondent. )

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CalBRE No. H-4644 SD

OAH No. 2014071150

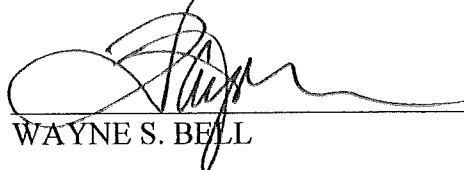
DECISION

The Proposed Decision dated November 17, 2014, 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.

This Decision shall become effective at 12 o'clock noon on **FEB 02 2015**.

IT IS SO ORDERED 12/17/2014.

REAL ESTATE COMMISSIONER

  
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 WAYNE S. BELL

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

In the Matter of the Accusation Against:

SAN VICENTE REAL ESTATE  
SERVICES, INC.

and

ARNOLD KRISTIAN FRY

Respondent.

Case No. H 04644

OAH No. 2014071150

**PROPOSED DECISION**

This matter came on regularly for hearing on October 16, 2014, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in San Diego, California.

Real Estate Counsel James Peel represented complainant, Veronica Kilpatrick, Deputy Real Estate Commissioner, Bureau of Real Estate (bureau).

Respondent Arnold Kristian Fry (respondent) represented himself.

Respondent San Vicente Real Estate Services, Inc. (San Vicente) is a suspended corporation. San Vicente did not request a hearing, and there was no evidence as to whether the bureau has issued a default decision against San Vicente.

The matter was submitted on October 16, 2014.

## FACTUAL FINDINGS

### *Jurisdictional Matters*

#### LICENSE HISTORY OF ARNOLD KRISTIAN FRY

1. On March 12, 1987, the Department of Real Estate (now bureau) issued a conditional real estate salesperson license to respondent Fry. The conditional status of the license terminated after respondent satisfied an educational requirement. Respondent's salesperson license terminated on November 12, 1992.

On November 13, 1992, the bureau issued a real estate broker license to respondent. The broker license expired in November 2000 and was renewed in December 2001. It expired again in December 2005 and was reissued in March 2008.

In September 2012, an application was made for an Order Directing Payment Out of the Real Estate Recovery Account R-4957 against respondent's account. On August 14, 2013, respondent's broker license was suspended indefinitely. On August 30, 2013, respondent's broker license was reinstated.

Respondent's broker license will expire on March 17, 2016, unless revoked or renewed.

#### INCORPORATION OF SAN VICENTE REAL ESTATE SERVICES, INC.

2. San Vicente was issued a corporate real estate broker license on January 15, 1988. In addition to real estate purchase and sales services, San Vicente provided escrow services. Helen Johnson was its designated Officer.

Respondent was the designated officer for San Vicente from January 22, 1993, until August 14, 2013, when he was suspended indefinitely. He was reinstated as of August 30, 2013. He remains as the designated officer through January 14, 2016.

#### FILING OF THE ACCUSATION

3. On June 10, 2014, the Accusation in Case No. H - 04644 - SD was signed by Veronica Kilpatrick in her official capacity as Deputy Real Estate Commissioner of the bureau. The Accusation and other required jurisdictional documents were served upon respondent. The Accusation seeks to revoke respondent's license based upon his failure to supervise the activities of San Vicente and based upon his making a material misrepresentation of fact in his license renewal application in 2012. The Accusation seeks to recover the costs of investigation and enforcement; however, no evidence of costs was submitted.

4. On July 21, 2014, a Notice of Defense on Accusation signed by respondent was received by the bureau.

#### *2003 Suspension of San Vicente*

5. Certified records of the California Secretary of State show that the Franchise Tax Board suspended San Vicente's "powers, rights and privileges" on October 1, 2003. As of September 12, 2012, San Vicente remained suspended.

#### *January 2012 Officer Renewal Application*

6. On January 11, 2012, respondent signed an Officer Renewal Application for San Vicente. The application was filed with the bureau and received on January 13, 2012. In response to Question 17, which asked "Is the corporation currently in good standing with the Office of the Secretary of State?" respondent checked the box for "Yes." In January 2012, San Vicente was a suspended corporation and had been suspended since 2003. Nonetheless, the corporation license had been renewed by the bureau in 2004, 2008, and 2012.

7. Although respondent was suspended as designated officer of San Vicente in August 2013, he was reinstated two weeks later. According to the bureau records, the corporate license is active and expires in January 2016.

#### *Respondent's Testimony*

8. Respondent's mother, Helen Johnson Lupin (Ms. Johnson or respondent's mother), incorporated San Vicente in the 1980s. Respondent began to work in his mother's company as a real estate salesman in 1991. His duties included recruiting and training personnel and handling day to day operations. He was not involved in the financial aspects of the corporation.

9. San Vicente grew to include 60 real estate agents. Mrs. Johnson and her husband George Lupin were active in the corporation and handled all the finance-related activities. Ms. Johnson was San Vicente's designated officer until January 1993 when respondent became the designated officer. Respondent continued to be involved in the corporation's daily operations and signed license renewals, but he had no responsibilities related to the finances of the corporation. He was unaware that the corporation was suspended by the Franchise Tax Board in 2003. His mother continued to tell him that the corporation was in good standing.

10. In mid-2004 to 2005, respondent became aware that the corporation was having financial difficulties. He spoke with representatives from the Internal Revenue Service (IRS) and completed forms that he understands were filed with them. Afterwards, his mother told him that the corporation was back on track and the finances were "caught

up.” Respondent believed his mother and relied on her representations that the corporation was in good standing when he filed license renewal applications for San Vicente.

11. Prior to 2010, George Lupin died. Respondent’s mother continued handing the financial obligations of the corporation, and respondent continued to rely on her representations that the corporation was in good standing.

12. Around 2010, the bureau conducted a random audit of San Vicente. Respondent spent several hours with the bureau’s inspector while the audit was conducted. The corporation passed the audit with only one minor issue noted in San Vicente’s related escrow company. No issue was raised by the inspector or the audit about San Vicente’s standing with the Secretary of State.

13. In November 2012, respondent learned for the first time that the corporation had been suspended in 2003. Officials from the Franchise Tax Board came to his office and told him about the suspension.

Respondent attempted to rectify the situation but realized he could not accomplish what had to be done in a timely manner, so he decided to cease doing business under the San Vicente corporate name. He has not done business under the San Vicente name for over one year, and he does not intend to renew San Vicente’s license when it expires in 2016.

14. Respondent incorporated a new business called Rancho San Vicente, Inc. (Rancho San Vicente) with himself as owner. In February 2013, he filed paperwork with the Secretary of State that designated himself as an officer of Rancho San Vicente. That designation remains in effect through February 25, 2017. Five agents work for Rancho San Vicente, and it does not have an escrow business. Respondent finds the new business to be more manageable. He has retained an accountant to pay all of the corporation’s bills and handle all of the financial matters relating to Rancho San Vicente. Rancho San Vicente is in good standing with the Secretary of State.

15. Respondent’s mother has dementia. Her condition accelerated in the last year, and she now requires full care; she is not involved with San Vicente and has no understanding of the corporation’s dealings. She was never involved in Rancho San Vicente.

16. By his own admission, respondent was issued a suspension on one occasion. Respondent listed a property for sale that was owned by a trust. The property did not sell, and the trust filed a lawsuit that claimed respondent was responsible for the failure of the property to sell because it was overpriced. Respondent’s insurance carrier rejected respondent’s claim and declined to defend the action; the insurance carrier claimed that respondent had performed an appraisal that was not a covered act. Respondent argued that he did not appraise the property.

The trust's attorney submitted a claim to the Real Estate Recovery Fund. The Fund paid the trust's claim and suspended respondent. Respondent testified that, until after his license was suspended, he had not been given notice that a claim had been filed, that the claim had been submitted to the Fund, or that the claim had been paid. As soon as he learned of the suspension he immediately repaid the Fund, and his suspension was lifted.

17. Respondent is proud of his real estate record and of his business. His priority is to take care of his customers. He operates his business honestly and properly. He was "shocked" when he learned that San Vicente had been suspended for nine years.

Respondent has taken steps to make sure that the mistakes that were made by San Vicente will never happen again. He continues to carry errors and omissions insurance on San Vicente and has not dissolved the corporation in case any other outstanding issues or concerns relating to San Vicente come to light before its license expires. There was no evidence that San Vicente has outstanding debts.

18. Respondent is involved in the Ramona community where the San Vicente corporation was headquartered and where Rancho San Vicente is now headquartered. He moved to Ramona in 1987 and raised two children there. He is consistently involved in local fund raising through the Ramona Chamber of Commerce. He was involved in the Ramona Rotary Club but stopped attending because of the time commitment required. He supports the community any way he can.

19. Respondent's testimony was direct and forthright. He answered questions clearly and completely. He acknowledged the problems relating to San Vicente. He expressed shock that neither the bureau, the Franchise Tax Board, the Secretary of State, nor any other governmental entity had alerted him to the fact that the corporation was suspended in 2003, despite his having renewed the license every four years since the suspension and despite the corporation having gone through a comprehensive audit by the bureau. Once he learned of the problem, respondent took immediate steps to remedy the situation and continues to keep the corporation intact should unknown liabilities arise. Respondent testified honestly and sincerely and his testimony was credible. At the hearing, complainant did not make a recommendation of the level of discipline sought to be imposed on respondent's license.

## LEGAL CONCLUSIONS

### *Applicable Statutory and Regulatory Provisions*

1. The suspension or revocation of a professional license must be based upon conduct proven by clear and convincing evidence. (*Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal. App. 4th 1494.)

2. Business and Professions Code section 10177 provides, in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

[¶] . . . [¶]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

[¶] . . . [¶]

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license . . . .

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

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3. Business and Professions Code section 10159.2 provides:

(a) The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

(b) A corporate broker licensee that has procured additional licenses in accordance with Section 10158 through officers other than the officer designated pursuant to Section 10211 may, by appropriate resolution of its board of directors, assign supervisory responsibility over salespersons licensed to the corporation to its broker-officers.

(c) A certified copy of any resolution of the board of directors assigning supervisory responsibility over real estate salespersons licensed to the corporation shall be filed with the Real Estate Commissioner within five days after the adoption or modification thereof.

4. Business and Professions Code section 10106 states in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.



(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the commissioner to increase the cost award. The commissioner may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

5. California Code of Regulations, title 10, section 2742, subdivision (c), provides:

A corporation licensed under Section 10211 of the Code shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State.

#### *Evaluation*

6. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

7. Cause exists to discipline respondent's license based upon the suspension of the corporate powers of San Vicente's corporate rights and privileges and respondent's failure, as the designated officer, to properly supervise activities of San Vicente which resulted in the corporation unlawfully conducting business while it was under suspension. Respondent, as designated officer of San Vicente, was responsible for all aspects of the corporation including its corporate standing. In mitigation, no evidence was presented that respondent had knowledge of the corporation's suspension until 2012, despite the fact that the bureau conducted an in-depth audit of the corporation in 2010. It was reasonable that respondent relied on his mother's representations that the corporation was "on track" and financially sound. No evidence was presented that respondent received actual notice from the Secretary of State or the Franchise Tax Board that the corporation was suspended in 2003. Respondent has acted responsibly since learning the corporation was suspended.

8. Cause does not exist to discipline respondent's license based upon his making a knowing material misrepresentation on a renewal application when he represented that San Vicente was a corporation in good standing. Respondent testified credibly that, until her illness, respondent's mother handled the financial liabilities of San Vicente and that she advised him that previous financial difficulties had been remedied and that the corporation was in good standing. The evidence does not show that respondent had notice that the corporation was not in good standing. In fact, the bureau conducted an in-depth audit of San Vicente and was also unaware that the corporation was not in good standing. Further,

respondent acted responsibly when he learned that the corporation was not in good standing; he stopped doing business as San Vicente but kept the corporation open, and he maintained an insurance policy on the corporation in case any unknown claims should arise.

*Level of Discipline*

9. To determine the level of appropriate discipline, all facts and circumstances are considered. No evidence was presented that respondent engaged in questionable business activities, nor were his ethics or integrity in real estate transactions doubted by the bureau. Respondent acted responsibly after he learned that San Vicente was suspended. He is active in his community. It is noted that complainant took no position at trial regarding the level of discipline warranted.

Upon consideration of the entirety of the facts, protection of the public is achieved by suspending respondent's license for a period of 90 days and staying the suspension for one year under certain terms and conditions. No public interest would be advanced by imposing additional discipline on respondent. Any further discipline imposed under these facts would improperly constitute punishment.

*Cost Recovery*

10. No evidence of costs incurred was submitted. No costs are awarded.

ORDER

All licenses and licensing rights of respondent Arnold Kristian Fry under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Decision; provided, however, that ninety (90) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and


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That no final subsequent determination be made, after hearing or upon stipulation,  
that cause for disciplinary action occurred within one (1) year of the effective date of this  
Decision. Should such a determination be made, the Commissioner may, in his discretion,  
vacate and set aside the stay order and reimpose all or a portion of the stayed suspension.  
Should no such determination be made, the stay imposed herein shall become permanent.

DATED: November 17, 2014

  
SUSAN J. BOYLE  
Administrative Law Judge  
Office of Administrative Hearings

**FILED**

BEFORE THE BUREAU OF REAL ESTATE

JAN 12 2015

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

\* \* \* \*

By *Byrd Danner*

In the Matter of the Accusation of )  
 )  
 SAN VICENTE REAL ESTATE )  
 SERVICES, INC., )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

No. H-4644 SD

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on November 25, 2014, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

The right to reinstatement of a revoked license is controlled by Section 11522 of the Government Code. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto for the information of the Respondent.

FINDINGS OF FACT

1. Respondent, SAN VICENTE REAL ESTATE SERVICES, INC., having failed to appear at the hearing in this matter, is now in default.
2. Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code") as a real estate broker.
3. Respondent was licensed by the Bureau of Real Estate of the State of California as a real estate broker effective January 15, 1998. The license expires on January 14, 2016.
4. The California Secretary of State suspended Respondent's "powers, rights and privileges" on October 1, 2003. Respondent remains suspended.

DETERMINATION OF ISSUES

1. Cause for disciplinary action against Respondent exists pursuant to Business and Professions Code Sections 10177(d) and 10177(f) in conjunction with Regulation 2742.

2. The standard of proof applied was clear and convincing proof to a reasonable certainty.

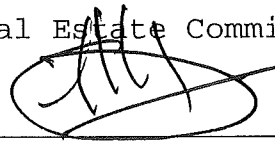
ORDER

The license and license rights of Respondent SAN VICENTE REAL ESTATE SERVICES, INC. under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon  
FEB 02 2015.

DATED: DECEMBER 15, 2014.

Real Estate Commissioner



By: JEFFREY MASON  
Chief Deputy Commissioner

1 Bureau of Real Estate  
2 320 West Fourth Street, Suite 350  
3 Los Angeles, California 90013-1105  
4 (213) 576-6982

**FILED**

NOV 25 2014

BUREAU OF REAL ESTATE

By *Byrd Rainier*

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of )  
12 ) NO. H-4644 SD  
13 SAN VICENTE REAL ESTATE )  
14 SERVICES, INC., )  
15 Respondent. ) DEFAULT ORDER

16 Respondent, SAN VICENTE REAL ESTATE SERVICES, INC.,  
17 having failed to appear at the hearing in this matter, is now  
18 in default. It is, therefore, ordered that a default be  
19 entered on the record in this matter.

20 IT IS SO ORDERED NOVEMBER 25, 2014.

22 Real Estate Commissioner

23  
24 By: *Phillip Ihde*  
25 PHILLIP IHDE  
26 Regional Manager  
27