

FILED

DEC 22 2011

DEPARTMENT OF REAL ESTATE

By L. Jones

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	NO. H-5455 SAC
)	
LEONARD E. WILLIAMS,)	OAH NO. 2010100524
)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated November 2, 2011, 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 JANUARY 11, 2012

IT IS SO ORDERED 12/21/11

BARBARA J. BIGBY
Acting Real Estate Commissioner

Barbara J. Bigby

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DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation Against:

Case No. H-5455 SAC By R. Jones

LEONARD E. WILLIAMS,

OAH No. 2010100524

Respondent.

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on August 8 and October 11, 2011, in Sacramento, California.¹

Truly Sughrue, Real Estate Counsel, represented complainant Tricia D. Sommers, Deputy Real Estate Commissioner of the State of California.

Leonard E. Williams (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on October 11, 2011.

SUMMARY

Complainant seeks to discipline respondent's real estate salesperson license on the grounds that respondent engaged in activities for which a real estate broker license was required without having such license.² Discipline is also sought on the grounds

¹ On August 8, 2011, respondent was present, but without the attorney he had identified on his Notice of Defense. The matter was continued to October 11, 2011, to allow respondent time to work out the details of his representation by the attorney he had identified or obtain new counsel.

² While the Accusation does not allege the status of respondent's licensure as a broker, such an allegation is necessarily implied by the allegations that he violated Business and Professions Code section 10131, subdivision (a), because such statute can be violated only by a person who is not licensed as a broker. (See, *Nelson v. Department of Alcoholic Beverage Control* (1959) 166 Cal.App.2d 783, 787-788 [an allegation that the wrongdoing occurred on the licensed premises was necessarily

that respondent manufactured a pre-approval letter in an effort to mislead the seller of real property into believing that respondent's client had been pre-approved for funds sufficient to purchase the property. Cause exists to discipline the license on the former grounds only. The evidence established that respondent engaged in a course of conduct that showed him to be dishonest and untruthful. Therefore, his salesperson license must be revoked.

FACTUAL FINDINGS

1. On June 1, 2004, the Department of Real Estate (department) issued Salesperson License No. S01427784 (license) to respondent. The license expired on May 31, 2008. The Department received respondent's Salesperson Renewal Application on June 12, 2008, and shortly thereafter sent correspondence to him explaining various deficiencies in the application. The department received a second Salesperson Renewal Application on November 12, 2009. His license was renewed effective December 7, 2009, and the renewed license expires on December 6, 2013, unless renewed or revoked. There is no history of prior discipline of the license. Respondent has no other licensing rights with the department.

2. On August 26, 2010, complainant, acting solely in her official capacity as a Deputy Real Estate Commissioner, filed an accusation seeking to discipline respondent's license on the grounds that he engaged in activities for which a real estate broker license was required without having such license. Discipline is also sought on the grounds that he manufactured a pre-approval letter in an effort to mislead the seller of real property into believing that respondent's client had been pre-approved for funds sufficient to purchase the property.

Respondent's Representation of a Buyer in a Real Estate Transaction

3. Karen Bartlett is a licensed real estate salesperson who was employed by Coldwell Banker from 2003 to 2009. In November 2008, she was the listing agent³ for a piece of residential real property located at 3853 Wrigley Way, North Highlands, California 95660 (property). The property was owned by Fannie Mae.

implied in the allegation that respondent violated Business and Professions Code section 25601, since a violation of such statute requires that the wrongdoing occurs on the licensed premises}.)

³ A "listing agent" is "a person who has obtained a listing of real property to act as an agent for compensation." (Civ. Code, § 2079.13, subd. (f).) A related term, "selling agent," refers to a listing agent who acts alone, "or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a

4. On November 12, 2008, Ms. Bartlett received an offer to purchase the property from Bay Area Real Estate Holdings, LLC (offer). She received the offer by email from Wendy Clymer, a person who claimed to be a real estate salesperson employed by Allied Financial Network. The offer identified Allied Financial Network as the selling agent representing Bay Area Real Estate Holdings, LLC. The offer also identified respondent, not Ms. Clymer, as the salesperson acting on behalf of Allied Financial Network in its representation of Bay Area Real Estate Holdings, LLC.

5. In addition to the offer, Ms. Bartlett received a letter which purported to be a "Pre-Approval Letter" from Allied Financial Network Mortgage Co. The letter, which was unsigned, contained a signature block for Jan Vawter and stated: "Bay Area Real Estate Holdings LLC has been pre-approved for a sales price of 110,000. [sic] pursuant to underwriting guidelines." The letter identified the property address as "3853 Wrigley Way, North Highlands, Ca. [sic] 95660."

6. Ms. Bartlett admitted to being a little confused by the fact that the offer and purported "Pre-Approval Letter" were sent to her by Ms. Clymer, but the offer identified respondent as the real estate licensee acting on behalf of Allied Financial Network in its representation of Bay Area Real Estate Holdings, LLC. Nonetheless, she submitted the offer to her client, Fannie Mae, for consideration.

7. Fannie Mae instructed Ms. Bartlett to make a counteroffer, which was ultimately accepted by Bay Area Real Estate Holdings, LLC. Representatives for Bay Area Real Estate Holdings, LLC, and Fannie Mae signed a Real Estate Purchase Addendum on or around November 26, 2008, which reflected the terms of the counteroffer (addendum). The addendum specified January 9, 2009, as the closing date.

8. Ms. Bartlett did not recall whether she discussed the addendum with Ms. Clymer or respondent. After it was signed, however, she received several statutory disclosures of information signed by respondent as the agent representing Bay Area Real Estate Holdings, LLC. And on January 6, 2009, Ms. Bartlett's assistant received a telephone call from respondent advising that he would be the main contact for Bay Area Real Estate Holdings, LLC, from that point forward. He also negotiated an extension of the closing date to January 21, 2009. He said an extension was needed because his client was having trouble qualifying for financing. After that date, Ms. Bartlett exchanged several emails and had multiple telephone conversations with respondent regarding the status of the closing and other related matters.

property for which no listing exists and presents an offer to purchase to the seller."
(Civ. Code, § 2079.13, subd. (n).)

9. As of January 21, 2009, the sale had not closed, and respondent requested an additional extension of the closing date. Ms. Bartlett became more suspicious of the sale, researched respondent's licensing history, and learned that he did not have a valid real estate salesperson license in California. She also discovered that Ms. Clymer was never licensed by the department in any capacity. Ms. Bartlett forwarded this information to Fannie Mae, and Fannie Mae cancelled the sale the following day. Either shortly before or after the sale was cancelled, Ms. Bartlett had a conversation with respondent where he asked "rather loudly" whether her client was going to sell the property. The deposit Bay Area Real Estate Holdings, LLC, had paid pursuant to the addendum was refunded to "BAY AREA REAL ESTATE HOLDING C/O LEONARD WILLIAMS."

The Department's Investigation of Respondent's Real Estate Activities

10. Ms. Bartlett filed a complaint with the department regarding her dealings with respondent. The complaint was assigned to Deputy Commissioner Marcus Beltramo for investigation. In December 2009, Deputy Commissioner Beltramo interviewed Janice Vawter, the purported author of the Pre-Approval Letter, by telephone. Ms. Vawter confirmed that she worked as a real estate salesperson for Allied Financial Network from March 14, 2008, through December 4, 2009. She disclaimed any knowledge of the Pre-Approval Letter and denied having written it, or giving anyone permission to write it.

Ms. Vawter confirmed that she knew that Josh Clymer and respondent worked with Bay Area Real Estate Holdings, LLC. However, she denied having arranged a loan for either of them or giving either of them permission to use her name in any way. She was aware of at least one previous occasion on which Mr. Clymer and respondent sent out a pre-approval letter using her name, but without her permission. She called and told both of them to stop using her name after that incident.

11. Deputy Commissioner Marcus Beltramo subpoenaed the escrow file for the proposed sale between Bay Area Real Estate Holdings, LLC, and Fannie Mae from the escrow company. The records produced included a Broker Demand submitted by respondent, whereby he purported to provide instructions on how the sale proceeds were to be divided.

12. Deputy Commissioner Beltramo also researched the department's records to determine respondent's license history. He discovered the history discussed in Factual Finding 1.

Respondent's Evidence

13. Respondent declined to testify and failed to call any other witnesses or produce any documentary evidence in his defense.

Evaluation of the Evidence

14. The clear and convincing evidence established that respondent engaged in the duties of a real estate broker when he represented Bay Area Real Estate Holdings, LLC, in its attempt to purchase property owned by Fannie Mae. (Bus. & Prof. Code, § 10131, subd. (a) ["A real estate broker . . . is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiations to do one or more of the following acts for another or others: (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity."]) His name was listed on the offer as the buyer's agent. (Factual Finding 4.) He signed and forwarded to Ms. Bartlett several statutory disclosures and negotiated an extension of the closing date on behalf of the buyer. (Factual Finding 8.) He represented to Ms. Bartlett's assistant that he (respondent) was the buyer's main contact. He prepared and submitted a Broker's demand to the escrow company. (Factual Finding 11.) He attempted to negotiate a second extension of the closing date, and, when he was unsuccessful, the buyer's deposit was refunded to him. (Factual Finding 9.) However, respondent has never held a broker license. (Factual Finding 1.) He offered no evidence in rebuttal. (Factual Finding 13.)

15. Complainant did not establish, by clear and convincing evidence, that respondent submitted a manufactured pre-approval letter in an effort to mislead Fannie Mae. There was no evidence that he wrote the letter or that he knew it was not authentic. Nor was there any evidence that he knew his client had not been pre-approved for a loan from Allied Financial Network Mortgage Co. While there was evidence that respondent had previously sent a pre-approval letter using Ms. Vawter's name without her permission in an unrelated matter (Factual Finding 10), no reasonable inferences about whether or not he did that in this matter can be drawn from such evidence. (Evid. Code, § 1101, subd. (a) [evidence of witness' prior conduct is inadmissible to prove his conduct on a specific occasion].)

Factors in Aggravation, Mitigation, and Rehabilitation

16. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) The evidence established that respondent engaged in repeated acts of dishonesty and untruthfulness by representing Bay Area Real Estate Holdings, LLC, in a transaction for which he was required to have a real estate broker license when he had no such license. (Factual Findings, 1, 4, 8, 9, 11, and 14.) He offered no evidence of rehabilitation. (Factual Finding 13.)

17. As discussed below, cause exists to discipline respondent's license based on his having engaged in real estate activities without a real estate broker license. His conduct raised serious concerns regarding his honesty and truthfulness, and he offered no evidence of any rehabilitation since he engaged in such conduct. (Factual Finding 16.) Therefore, the evidence established that the appropriate discipline is the outright revocation of his license.

LEGAL CONCLUSION

1. A real estate license may be disciplined when the licensee willfully violates any provision of the Real Estate Law or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 10177, subd. (d).) Business and Professions Code section 10130 precludes a person from "engage[ing] in the business, act[ing] in the capacity of, advertis[ing] or assum[ing] to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department." Respondent purported to act in the capacity of a real estate broker when he represented Bay Area Real Estate Holdings, LLC, in its efforts to purchase the property owned by Fannie Mae. (Factual Findings 4, 8, 9, 11, 13, and 14.) At no time did he have a real estate broker license. (Factual Finding 1.) Therefore, cause exists to discipline his real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code sections 10130 and 10131, subdivision (a).

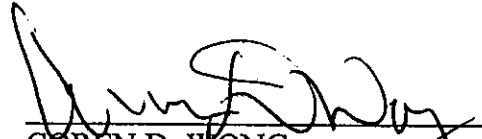
2. A real estate license may be disciplined when the licensee makes a substantial misrepresentation or otherwise engages in conduct which constitutes fraud or dishonest dealing. (Bus. & Prof. Code, §§ 10176, subds. (a) and (i); 10177, subd. (j).) Complainant alleged grounds for discipline based on respondent having manufactured the Pre-Approval Letter on Ms. Vawter's behalf without her permission. But for the reasons discussed in Factual Finding 15, complainant failed to prove such conduct by clear and convincing evidence. Therefore, no cause exists to discipline respondent's real estate salesperson license pursuant to Business and Professions Code sections 10176, subdivisions (a) and (i); 10177, subdivision (j); or any of them.

3. Cause exists to discipline respondent's license for the reasons discussed in Legal Conclusion 1. When all of the evidence is considered, the appropriate discipline is to revoke his salesperson license for the reasons discussed in Factual Findings 16 and 17.

ORDER

All licenses and licensing rights of respondent Leonard E. Williams under the Real Estate Law are REVOKED.

DATED: November 2, 2011


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

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FILED

AUG 26 2010

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 LEONARD E. WILLIAMS,)
14 Respondent.)

No. H-5455 SAC
ACCUSATION

15
16 The Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the
17 State of California, for cause of Accusation against LEONARD E. WILLIAMS, (hereinafter
18 "Respondent"), are informed and alleges as follows:

19 PRELIMINARY ALLEGATIONS

20 1

21 The Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the
22 State of California, makes this Accusation in her official capacity.

23 2

24 Respondent is presently licensed and/or has license rights under the Real Estate
25 Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").

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2 Respondent was and is licensed by the Department individually as a real estate
3 salesperson. Respondent's real estate salesperson license expired on or about May 31, 2008.
4 Respondent failed to timely renew his salesperson license. Respondent's renewal was effective
5 on or about December 7, 2009.

6 4

7 At all times mentioned, Respondent engaged in the business of, acted in the
8 capacity of, advertised or assumed to act as a real estate broker in the State of California within
9 the meaning of Section 10131(a) of the Code, including the operation and conduct of a real estate
10 resale brokerage with the public wherein, on behalf of others, for compensation or in expectation
11 of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited
12 prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the
13 purchase and resale of real property; and

14 FIRST CAUSE OF ACTION

15 5

16 Each and every allegation in Paragraphs 1 through 4, are incorporated by this
17 reference as if fully set forth herein.

18 6

19 Beginning on or about November 2008, Respondent, in course of the real estate
20 resale brokerage activities described in Paragraph 4, sold and offered to sell, bought and offered
21 to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and
22 negotiated the purchase and resale of real property on behalf of others; including but not limited
23 to the property located 3853 Wrigley Way, North Highlands, California.

24 7

25 By the commission of the acts alleged above, Respondent engaged in the business
26 and acted in the capacity of a real estate broker within the State of California as defined by
27 Section 10131(a) of the Business and Professions Code.

The facts alleged in above are grounds for the suspension or revocation of the licenses of Respondent under Section 10130 of the Code in conjunction with 10177(d) of the Code.

SECOND CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 8, inclusive, above, are incorporated by this reference as if fully set forth herein.

Beginning around November 2008, Respondent acting as an agent of Bay Area Real Estate Holdings LLC (hereinafter "BAREH") as purchaser, solicited and obtained a written agreement to purchase residential real property at 3853 Wrigley Way, North Highlands, California (hereinafter "subject property"). In order to induce the seller, Fannie Mae, to accept BAREH's offer Respondent submitted a pre-approval letter from Jan Vawter, Senior Loan Officer at Allied Financial Network Mortgage Co. representing, contrary to fact, that BAREH had been preapproved for a loan of \$110,000 to purchase the subject property. In truth, BAREH never obtained a pre-approval letter from Allied Financial Network Mortgage Co., and Respondent knew this to be true at the time the letter was submitted.

The acts and omissions of Respondent described above constitutes fraud and/or dishonest dealing, and constitutes cause to suspend or revoke all licenses and license rights of Respondent pursuant to the provisions of Sections 10176(a), 10176(i), and/or 10177(j) of the Code.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of
4 Division 4 of the Business and Professions Code), and for such other and further relief as may be
5 proper under other provisions of law.

6
7 
8 TRICIA SOMMERS
Deputy Real Estate Commissioner

9 Dated at Sacramento, California,
10 this 10th day of August, 2010

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