

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC -7 2005

DEPARTMENT OF REAL ESTATE

By 

* * *

In the Matter of the Application of)	
)	NO. H-8967 SF
JIM WARD AND ASSOCIATES,)	
a California Corporation, and)	OAH NO. N-2004110569
JAMES STANLEY WARD,)	
)	
Respondents.)	
)	

DECISION

The Proposed Decision dated November 3, 2005, 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.

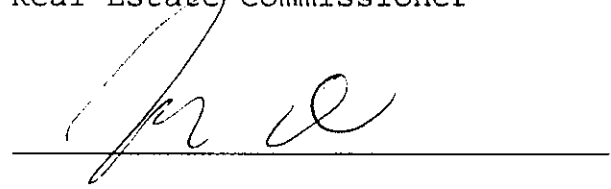
The application for a real estate corporation license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon
on DEC 28 2005.

IT IS SO ORDERED

12-7-05

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JIM WARD and ASSOCIATES,
a California Corporation, and
JAMES STANLEY WARD,

Respondents.

No. H-8967 SF

OAH No. N2004110569

PROPOSED DECISION

On August 2, August 3, August 4 and September 15, 2005, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James L. Beaver, Counsel, represented Complainant Janice Waddell.

Steven Gourley, Attorney at Law, Law Offices of Steven Gourley, 10757 Stephon Terrace, Culver City, California 90230, represented Respondents Jim Ward and Associates, a California corporation, and James Stanley Ward. Robert Carey, Attorney at Law, Carey & Carey, Law Corporation, P.O. Box 1040, Palo Alto, California 94302-1040, represented Respondent James Stanley Ward, only. Respondent James Stanley Ward was present during all phases of the hearing.

The record remained open for the purpose of providing the parties the opportunity to file written closing arguments. On October 7, 2005, through Messrs. Gourley and Carey, Respondent Jim Ward and Associates, a California corporation, and Respondent James Stanley Ward filed, via telefacsimile transmission, with OAH a brief entitled, "Respondents' Post-Hearing Brief." The brief was marked as Exhibit "S," and received as Respondents' closing argument. On October 7, 2005, through the Department's counsel, Complainant filed with OAH a brief captioned, "Complainant's Hearing Brief." Complainant's written closing argument was marked as Exhibit "19."

On October 7, 2005, the parties were deemed to have submitted the matter and the record closed.

FINDINGS OF FACT

1. On August 31, 2004, Complainant Janice Waddell (Complainant), a Deputy Real Estate Commissioner of the State of California, in her official capacity, made the Statement of Issues against Respondent Jim Ward and Associates, a California corporation, and Respondent James Stanley Ward. The Department filed the Statement of Issues on October 13, 2004.

James Stanley Ward

2. Respondent James Stanley Ward (Respondent J. S. Ward) is presently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

On September 16, 1974, the Commissioner issued Respondent J. S. Ward a real estate salesperson license (number 00493126). On July 10, 1975, a real estate broker license was issued to Respondent J. S. Ward.

On May 24, 1995, the Commissioner licensed Respondent J. S. Ward as the designated officer of Jim Ward & Associates, Inc., a licensed real estate corporation. The designated officer license issued to Respondent J. S. Ward for Jim Ward & Associates, Inc. will expire on May 23, 2007. But, during a process of liquidation between January 31, 1997, and April 22, 1997, Jim Ward & Associates, Inc., merged into another California corporation known as Windy Hill. Hence, after April 22, 1997, Jim Ward & Associates, Inc., ceased to exist as a viable corporation, and in the context of the 1997 merger, it was deemed as the "non-surviving" or "disappearing" corporation. After that date in April 1997, the Office of the Secretary of State no longer recorded Jim Ward & Associates, Inc., as being in good standing as a California corporation. Yet, neither Respondent J. S. Ward, nor agents or employees of Jim Ward & Associates, Inc., notified the Commissioner of the Department of Real Estate of the merger action that rendered that real estate corporation as no longer being a viable California corporation.

On June 21, 1996, the Commissioner licensed Respondent J. S. Ward as the designated officer of Principal Funding Group, Inc. The designated officer license issued to Respondent J. S. Ward for Principal Funding Group, Inc. was canceled as of January 27, 1997.

Jim Ward and Associates, a California Corporation

3. On about August 23, 2000, the Office of the Secretary of State recorded as being filed articles of incorporation, bylaws and other documents that pertained to the formation of Jim Ward and Associates, a California corporation (Respondent Ward Associates). The Secretary of State issued corporation number 2258717 for Respondent Ward Associates. Respondent J.S. Ward became, and he continues to be, an officer, director, and shareholder, who owned or controlled 10 percent or more of the stock, of Respondent Ward Associates.

4. Respondent Ward Associates, through its officers, directors or shareholders, never became licensed by the Commissioner of the Department of Real Estate as a real estate corporation. The Department of Real Estate has never issued a designated officer-broker license to any Department licensee, such as Respondent J. S. Ward, in order to permit Respondent Ward Associates to engage in licensed real estate brokerage activities and functions in the State of California.

5. On February 13, 2004, the Department of Real Estate (Department) received respondents' application for licensure on the Department's Corporation License Application (RE 201) form. On December 30, 2003, Respondent J. S. Ward signed, or caused a facsimile signature to be affixed by rubber stamp, in his capacity as officer applicant.

The application's objective was to obtain licensure for Respondent Ward Associates as a corporate real estate broker, and to qualify Respondent J. S. Ward as the corporation's designated officer-broker so that he might act for the corporation as the responsible real estate broker.

The application remains pending as the Department has refused to issue a license to respondents due to past acts and omissions that appear to disqualify them for licensure.

6. From August 23, 2000, until June 27, 2005, Respondent J. S. Ward and Respondent Ward Associates, through agents and employees, engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the meaning of Business and Professions Code section 10131, subdivisions (d) and (e). Respondents' acts included the operation and conduct of a mortgage loan brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation. Also, Respondents solicited lenders and borrowers for loans secured directly or collaterally by liens on real property, wherein Respondents arranged, negotiated, processed, and consummated such loans. By such later described functions, Respondents serviced and collected payments on loans. Also Respondents sold or offered to sell, bought or offered to buy, or exchanged or offered to exchange promissory notes secured directly or collaterally by respective liens on real property. And Respondents performed services for the holders of liens on real property, including the servicing and collecting payments on promissory notes that related to the liens on real property.

Auditor's Findings and Conclusions

7. Over the course of several months beginning on April 2, 2003, and ending on August 20, 2003, Department auditor Michael J. Rivera (Auditor Rivera) performed, on an intermittent basis, an accounting examination of the bank statements, canceled checks, loan files, separate records of each beneficiary, records of trust funds received and disbursed (Control Accounts), bank signature cards, and other accounting records and various invoices maintained by the corporation, which was believed by the Department and its auditor to be Jim Ward & Associates, Inc., with Respondent J. S. Ward as the designated corporate officer.

Auditor Rivera conducted the audit examination of records in Mountain View, California, at the principal offices of the entity that was believed to be a licensed corporate broker, and the offices that housed the law office of David Lee, Esquire (Mr. Lee).

The audit examination, focused upon the mortgage loan brokerage operated by Respondent J. S. Ward and Mr. Lee, the attorney-at-law, who had represented the interests of Respondent J.S. Ward over the course of preceding years.

Auditor Rivera selected the time span of September 1, 2000, through December 31, 2002, as the period he examined the accounting records and other records of the corporate entity for which Respondent J. S. Ward acted as designated officer-broker. The auditor's examination was to ascertain whether trust funds under the control of the supposed real estate corporation had been handled and accounted for in accordance with the California Real Estate Law and the Commissioner's Regulations.

8. During the audit examination, for the most part, Auditor Rivera met with Mr. Lee to gain explanations of questions that arose during the course of the audit. But Auditor Rivera only met personally with Respondent J. S. Ward during the entrance conference on April 2, 2003, because Respondent J. S. Ward has a domicile in the State of Ohio and he resided in the State of California only for certain days during particular months of the year.

9. On October 1, 2003, Auditor Rivera issued an Audit Report, which was reviewed and approved by Supervising Auditor Daniel J. Sandri. The Audit Report, which contained sections titled "audit scope," "background," "findings," which included a "list of trust/ bank accounts," and "discussions of issues," and "conclusions," was reasonable and sound.

The audit report showed that Respondent Ward and Associates, under the direction and control of Respondent J. S. Ward, had engaged in the business of mortgage lending brokerage for dates before respondents filed applications for licensure respectively as a real estate corporation and a designated officer-broker for the corporation.

Unlawful Acts of Respondents

10. In the course of operating and conducting mortgage loan brokerage business activities and functions, between January 1, 2002, and December 31, 2002, Respondent J. S. Ward and Respondent Ward Associates, an unlicensed real estate corporation, jointly, and through agents or employees, arranged, negotiated, processed, and consummated approximately twenty-five loans, which were secured directly or collaterally by liens on real property in the aggregate amount of about eighteen million (\$18,000,000) dollars. Also, Respondent J. S. Ward and Respondent Ward Associates, an unlicensed real estate corporation, jointly, and through agents or employees, serviced and collected payments on approximately thirty-five (35) loans that totaled about twenty-five million (\$25,000,000) dollars.

11. While Jim Ward & Associates, Inc., was not in good legal standing as a California corporation with the Office of the Secretary of State, Respondent Ward and Associates, violated, and Respondent J. S. Ward willfully caused and permitted Ward Associates to violate California Code of Regulations, title 10, section 2742, subdivision (c), when agents or employees of Respondent Ward Associates engaged in acts that required licensure with the Commissioner.

12. While Jim Ward & Associates, Inc., was not in good legal standing as a California corporation with the California Secretary of State, Respondent Ward Associates, violated, and Respondent J. S. Ward willfully caused and permitted Respondent Ward Associates to violate Business and Professions Code section 10130, when agents or employees of Respondent Ward Associates engaged in acts that required licensure with the Commissioner.

Matters in Mitigation and Extenuation

13. Since 1975, Respondent J. S. Ward has held a license to serve as a real estate broker. From 1976 until 1994, Respondent J. S. Ward acted as a sole proprietor of a real estate broker's office. He incorporated the business under the name of Respondent Ward, Inc. in about 1995.

Over the past thirty years, Respondent J. S. Ward has not been the subject of disciplinary action by the Department of Real Estate before the disciplinary action associated with the Accusation under agency case number H-8685 SF (OAH No. N2004110570).

14. Complainant offered no competent evidence to show that Respondent J. S. Ward unreasonably or unlawfully used trust fund money for his personal use during the unlicensed operations of Respondent Ward Associates.

15. Complainant did not demonstrate that Respondent J. S. Ward, individually, or through Respondent Ward Associates, an unlicensed real estate corporation, has been convicted or charged with a crime involving moral turpitude.

16. Complainant did not establish that Respondent J. S. Ward or that agents or employees of Ward Associates engaged in theft, fraud, embezzlement while conducting operations and functions of an unlicensed real estate corporation.

17. Neither Respondent J. S. Ward nor agents or employees of Respondent Ward Associates engaged in commingling of funds in conducting business as an unlicensed real estate corporation. They did not commit acts or participate in omissions that led to loss of money of borrowers or investors. Respondent Ward or Respondent Ward Associates did not cause any lien to be attached to trust accounts.

18. Complainant offered no evidence that agents or employees of Respondent J. S. Ward or Respondent Ward Associates made any misrepresentations directly to investors. No

investor complained to Department personnel about the operations of Respondent Ward Associates or the dealings of Respondent J. S. Ward.

19. Complainant provided no evidence that any of Respondent Ward Associate's mortgage loan brokerage clients or trust account beneficiaries suffered any financial harm by respondent's irregular business practices.

Matters in Aggravation

20. By his demeanor while testifying, his exaggerated assertions that were inconsistent from more credible evidence, and his attitude towards the proceeding, Respondent J. S. Ward was not a credible¹ witness in many aspects of his testimony.

Respondent J. S. Ward was not believable that he had a reasonable understanding and that he could lawfully rely upon Ms Emerson to handle all regulatory requirements with the Department of Real Estate to secure licensed status for Respondent Ward Associates.

21. Respondent J. S. Ward engaged in frivolous arguments that personnel within DRE engaged in unethical practices in the prosecution of the Statement of Issues in this matter. Respondents wasted time and energy with a tactic to shift from Respondent J. S. Ward's grave departure from standards expected of real estate corporation's licensed officer-broker but to blame Department personnel of engaging in a so-called unjustified prosecution of respondents.

Other Matters

22. It would be against the public interest to permit Respondent Ward Associates to acquire a license and licensing rights as a real estate corporation in the State of California.

23. It would be against the public interest to permit Respondent J. S. Ward to gain licensed status as the designated officer-broker for a licensed real estate corporation.

LEGAL CONCLUSIONS

The Standard of Proof

1. The standard of proof in an administrative disciplinary action that seeks the denial of a license is a preponderance of evidence.

The burden of proof in this matter rests with respondents.

Respondents failed to establish by a preponderance of evidence a basis to reverse agency's grounds for denial of licensure.

¹ Government Code section 11425.50, subdivision (b), third sentence.

Statutory Authority - Violations of the Real Estate Law and Commissioner's Regulations

2. Business and Professions Code section 10130 sets forth:

It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume 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.

Business and Professions Code section 10177, subdivision (d), establishes that the Commissioner of the Department of Real Estate may deny the issuance of a license to an applicant:

who has done any of the following, . . . 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 . . . [w]illfully 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.

The concept of “willful” is given broad meaning in the realm of administrative licensure disciplinary proceedings. “Willful” does not imply a malicious intent to do wrong or a consciousness for malfeasance on the part of a licensee to violate a rule, statute or standard of due care. The term “willful” . . . does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done was done or omitted intentionally. It amounts to nothing more than this: that the person knows what he is doing, intends to do what he is doing, and is a free agent. [citations omitted.]” *Suman v. BMW of North America, Inc.* (1994) 23 Cal.App.4th 1, 12. (See also: *Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 713; *Milner v. Fox* (1980) 102 Cal.App.3d 567, 573-575 fn.9; and *Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639.)

Cause for denial of licensure exists under Business and Professions Code section 10177, subdivision (d), as that section interacts with Code section 10130, by reason of the matters set forth in Factual Findings 4 through 12 inclusive.

Respondents' Irrelevant Arguments and Offers of Proof

3. In Respondents' Post-Hearing Brief, dated October 7, 2005, respondents assert a request “to withdraw the application for license dated December 30, 2003, thereby making the DRE's Statement of Issues filed on October 13, 2004, unnecessary” But, Complainant herein has not communicated a motion to dismiss the Statement of Issues.

Government Code section 11504 provides that an administrative adjudication proceeding “to determine whether a right, authority, license, or privilege should be granted,

issued or renewed shall be initiated by filing a statement of issues. . . .” The pleading under Government Code section 11504 springs from steps taken by personnel of a California government agency. Government Code section 11520, subdivision (b), prescribes that “[i]f a contested case is heard by an administrative law judge . . . , he . . . shall prepare within 30 days after the case is submitted a proposed decision in a form that may be adopted as the decision in the case” Although respondent assert the withdrawal of the application for licensure, Complainant has not communicated the agency’s request to dismiss the Statement of Issues. Hence, unless Complainant initiates withdrawal of the Statement of Issues, the undersigned is compelled to issue a proposed decision.

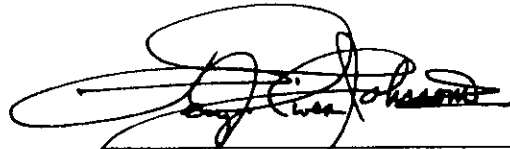
Respondents’ argument that the findings and an order in a proposed decision would be moot by reason of the unilateral withdrawal of Respondents’ application for licensure is without merit and is not granted.

ORDER

1. The application of Respondent Jim Ward and Associates, a California corporation, for a real estate corporation license is denied.

2. The application of Respondent James Stanley Ward for a designated officer-broker license so as to be qualified to act as a real estate broker for Respondent Jim Ward and Associates, a California corporation, is denied.

DATED: November 3, 2005



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)
7

FILED
OCT 13 2004

DEPARTMENT OF REAL ESTATE
Laurie G. Z...
By

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No. H-8967 SF
12 JIM WARD AND ASSOCIATES,)
13 a California Corporation, and) STATEMENT OF ISSUES
14 JAMES STANLEY WARD,)
15 Respondents.)

16 The Complainant, Janice Waddell, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against Respondents JIM WARD AND ASSOCIATES, a California
19 Corporation (herein "WARD ASSOCIATES") and JAMES STANLEY WARD
20 (herein "WARD"), alleges as follows:

21 I

22 Complainant, Janice Waddell, a Deputy Real Estate
23 Commissioner of the State of California, makes this Statement of
24 Issues in her official capacity.

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II

At all times herein mentioned, Respondent WARD was and now is licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (herein "Code") as a real estate broker.

III

At all times mentioned herein from and after August 23, 2000, Respondent WARD ASSOCIATES was and now is a corporation organized and existing under the laws of the State of California, identified in the records of the Secretary of State as corporation number 2258717, and WARD was and now is an officer, director, and/or person owning or controlling 10 percent or more of the stock of said Respondent corporation.

IV

At no time mentioned herein was Respondent WARD ASSOCIATES licensed by the Department as a real estate broker.

V

On or about February 13, 2004, Respondent WARD ASSOCIATES, and Respondent WARD to qualify Respondent WARD ASSOCIATES as said corporation's designated officer - broker and to act for said corporation as a real estate broker, made application (herein "the Application") to the Department of Real Estate of the State of California (herein "the Department") for the issuance to Respondent WARD ASSOCIATES of a corporate real estate broker license and for the issuance to WARD of a real estate broker license as an officer of Respondent WARD ASSOCIATES.

1 VI

2 Whenever reference is made in an allegation in this
3 Accusation to an act or omission of Respondent WARD ASSOCIATES,
4 such allegation shall be deemed to mean that the officers,
5 directors, employees, agents and/or real estate licensees
6 employed by or associated with Respondent WARD ASSOCIATES.
7 committed such act or omission while engaged in the furtherance
8 of the business or operations of such corporate Respondent and
9 while acting within the course and scope of their authority and
10 employment.

11 VII

12 At all times mentioned herein from and after
13 August 23, 2000, Respondents WARD and WARD ASSOCIATES, acting as
14 the agents and employees of one another, engaged in the business
15 of, acted in the capacity of, advertised, or assumed to act as a
16 real estate broker within the State of California within the
17 meaning of Sections 10131(d) and 10131(e) of the Code, including
18 the operation and conduct of a mortgage loan brokerage with the
19 public wherein, on behalf of others, for compensation or in
20 expectation of compensation, Respondent solicited lenders and
21 borrowers for loans secured directly or collaterally by liens on
22 real property, wherein Respondent arranged, negotiated,
23 processed, and consummated such loans, wherein Respondent
24 serviced and collected payments on such loans, and wherein
25 Respondent sold or offered to sell, bought or offered to buy, or
26 exchanged or offered to exchange promissory notes secured
27 directly or collaterally by a lien on real property and

1 performed services for the holders thereof, including servicing
2 and collecting payments on such promissory notes.

3 VIII

4 Between on or about January 1, 2002 and on or about
5 December 31, 2002, in course of the mortgage loan brokerage
6 activities described in Paragraph VII, above, Respondents WARD
7 ASSOCIATES and WARD, acting as the agents and employees of one
8 another, arranged, negotiated, processed, and consummated
9 approximately 25 loans secured directly or collaterally by liens
10 on real property in the aggregate sum of approximately
11 \$18,000,000.00, and Respondents serviced and collected payments
12 on approximately 35 loans totaling approximately \$25,000,000.00.

13 IX

14 In acting as described in Paragraphs VII and VIII,
15 above, Respondent WARD ASSOCIATES violated Section 10130 of the
16 Code, and Respondent WARD willfully caused, suffered and or
17 permitted WARD ASSOCIATES to violate Section 10130 of the Code.

18 X

19 The acts and omissions of Respondents WARD and WARD
20 ASSOCIATES described above, constitute cause to deny Respondent
21 WARD ASSOCIATES' application for a corporate broker license and
22 cause to deny Respondent WARD's application for a license as an
23 officer of Respondent WARD ASSOCIATES pursuant to the provisions
24 of Section 10130 of the Code in conjunction with Section
25 10177(d) of the Code.

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WHEREFORE, Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of real estate broker licenses to Respondents, and for such other and further relief as may be proper in the premises.


JANICE WADDELL
Deputy Real Estate Commissioner

Dated at Los Angeles, California,
this 21 day of August, 2004.