

FILED
FEB 19 2013

DEPARTMENT OF REAL ESTATE
By R. M. F.

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

ANTIOCH REALTY GROUP, INC.
and ALLEN RAY SCHNIBBEN,

Respondents.

No. H-11440 SF

(As to Antioch Realty
Group, Inc. only)

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 January 28, 2013, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes the real estate license and/or license rights of ANTIOCH REALTY GROUP, INC., (herein ARG) on grounds of violations of Sections 10145 (handling of trust funds), 10159.5 (fictitious business name), 10176(a) (misrepresentation), 10176(i) (fraud or dishonest dealing), and 10177(d) (willful disregard or violation of real estate law) and/or 10177(g) (negligence or incompetence) of the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code ("the Code"), and Sections 2731 (use of fictitious business name), 2831 (trust fund records maintenance), 2831.1 (maintenance of separate records for each beneficiary or transaction), 2831.2 (trust account reconciliation), 2832.1 (trust fund handling for multiple beneficiaries) and 2834 (trust account withdrawals) of the California Code of Regulations ("the Regulations").

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

FINDINGS OF FACT

1

On August 13, 2012, Robin S. Tanner made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, to Respondent's last known mailing addresses on file with the Department on August 15, 2012.

On January 28, 2013, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2

Respondent is presently licensed and/or has license rights under the Code as a corporate real estate broker.

3

ALLEN RAY SCHNIBBEN ("SCHNIBBEN") is presently licensed and/or has license rights under the Code as a real estate broker. At all times relevant herein, SCHNIBBEN was licensed by the Department as the designated broker/officer of Respondent ARG. As the designated broker/officer, SCHNIBBEN was responsible, pursuant to Section 10159.2 (responsibility of corporate officer in charge) of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of Respondent ARG for which a real estate license is required.

4

At all times relevant herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(d) (broker defined – performing services for borrowers/lenders in connection with loans secured by real property) of the Code, including the operation and conduct of a loan brokerage business with the public, wherein, on behalf of others, for compensation or in expectation of compensation, Respondent solicited lenders and borrowers for loans secured directly or collaterally by liens on real property, and wherein Respondent arranged, negotiated, processed and consummated such loans; and engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(b) of the Code (broker defined – property management/collection of rent), including the operation and conduct of a property management business with the public, wherein, on behalf of others, for compensation or in expectation of compensation, Respondent leased or rented or offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

On or about January 25, 2010, and continuing intermittently through February 26, 2010, an audit was conducted of Respondent at its main office located at 4041 Lone Tree Way, Suite 101, Antioch, California, where the auditor examined the records for the period of January 1, 2008, through December 31, 2009 (the audit period).

While acting as a real estate broker as described in Paragraph 4, above, and within the audit period, ARG accepted or received funds in trust (trust funds) in the course of the loan brokerage and property management activities described in Paragraph 4, above, and deposited or caused the funds to be deposited into a bank accounts maintained by ARG, including:

Trust Account #1

Fremont Bank
200 Sand Creek Road, Suite F
Brentwood, CA 94513
Account No.: XXXX1267

Account Name: Antioch Realty Group Inc Trust Account

Signatories: Jennifer Haus, RES (Team Leader)
Joe Dauskurdas, Non-licensee (Secretary)
Richard Geha, RES (President)

Thereafter, from time-to-time, Respondent made disbursements of said trust funds.

In the course of the activities described in Paragraph 4, above, in connection with the collection and disbursement of trust funds:

- (a) On or about December 31, 2009, there was a \$1,916.78 shortage for Trust Account #1. Respondent did not provide evidence that the owners of the trust funds had given their written consent allowing it to reduce the balance of the funds in Trust Account #1 to an amount less than the existing aggregate trust fund liabilities;
- (b) Respondent allowed improper signatories on Trust Account #1, including Dauskurdas, who was not licensed by the Department to conduct real estate activities and was not an employee of Respondent; Geha, who was licensed as a real estate salesperson by the Department under the broker license of someone other than Respondent or SCHNIBBEN; and Haus, who was licensed as a real estate salesperson by the Department under the broker

license of Respondent, but did not have proper written authority to make withdrawals from Trust Account #1. In addition, SCHNIBBEN was not listed as a signatory on Trust Account #1;

- (c) Respondent failed to maintain a record of all trust funds deposited into and disbursed from Trust Account #1. Respondent failed to maintain separate records for each beneficiary of funds held in Trust Account #1;
- (d) Respondent failed to reconcile the total of separate beneficiary/property records with a control record on a monthly basis.

8

Respondent used the fictitious business name of "Keller Williams Realty – TOP Management" in conducting the real estate loan brokerage and property management activity set forth in Paragraph 4, above, without first obtaining a license bearing that fictitious business name from the Department.

9

In at least three (3) real estate transactions, Respondent failed to collect the earnest money deposit from buyers even though the purchase contract indicated such deposits had been collected, including:

<u>Buyer</u>	<u>Property</u>	<u>Offer Date</u>	<u>Alleged Deposit</u>
Alejandro P.	1733 Brampton Place Brentwood, CA	03/19/08	\$5,000.00
Andrew & Silvia F.	1476 Carpenter Road Oakley, CA	11/19/08	\$6,500.00
Robert & Angela R.	931 Orchid Court Brentwood, CA	07/10/09	\$8,000.00

DETERMINATION OF ISSUES

1

Cause of disciplinary action against Respondent ARG exists with reference to the facts set out in Paragraphs 7 through 9, above, for violation of Sections 10145, 10159.5, 10176(i), and 10177(d) and/or 10177(g) of the Code, and Sections 2731, 2831, 2831.1, 2831.2, 2832.1 and 2834 of the Regulations.

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

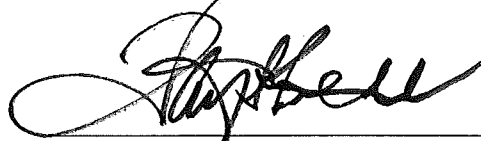
ORDER

All licenses and licensing rights of Respondent ANTIOCH REALTY GROUP, 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 on
MAR 12 2013

DATED: 2/16/2013

REAL ESTATE COMMISSIONER



By WAYNE S. BELL
Chief Counsel

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FILED
JAN 28 2013

DEPARTMENT OF REAL ESTATE
By R. MAT

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 ***

11 In the Matter of the Accusation of)	
)	No. H-11440 SF
12 ANTIOCH REALTY GROUP, INC.)	
13 and ALLEN RAY SCHNIBBEN,)	<u>DEFAULT ORDER</u>
)	
14 Respondents.)	(As to Antioch Realty
)	Group, Inc. only)

16 Respondent, ANTIOCH REALTY GROUP, INC., having failed to file a Notice
17 of Defense within the time required by Section 11506 of the Government Code, is now in
18 default. It is, therefore, ordered that a default be entered on the record in this matter.

19 IT IS SO ORDERED 1/28/13

20 REAL ESTATE COMMISSIONER

21
22 By: Joe M. Carrillo
23 JOE M. CARRILLO
24 Northern Regional Manager

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