

FILED

JAN 28 2014

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 OLIVIA LEE,)
)
 Respondent.)
_____)

NO. H-11554 SF
OAH NO. 2013080160

DECISION

The Proposed Decision dated January 8, 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.

The Decision suspends or revokes the real estate license and/or license rights; however, the right to a restricted real estate salesperson license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension 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.

This Decision shall become effective at 12 o'clock noon on

FEB 18 2014

IT IS SO ORDERED

JAN 22 2014

REAL ESTATE COMMISSIONER

[Signature]

By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OLIVIA LEE,

Respondent.

Case No. H-11554 SF

OAH No. 2013080160

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on December 12, 2013, in Oakland, California.

Stephanie K. Sese, Real Estate Counsel, represented Complainant Robin S. Tanner, a Deputy Real Estate Commissioner.

Frank M. Buda, Attorney at Law, represented Respondent Olivia Lee.

The record closed on December 12, 2013.

FACTUAL FINDINGS

1. Complainant Robin S. Tanner filed the Accusation in her official capacity as a Deputy Real Estate Commissioner for the Bureau of Real Estate (Bureau), State of California.
2. The Bureau initially licensed Olivia Lee (Respondent) as a real estate salesperson on September 18, 1998. As of October 26, 2011, Respondent's employing broker was USA Global Investment Corporation. The license will expire September 17, 2014, unless renewed.
3. On January 18, 2006, the Office of Real Estate Appraisers (OREA) issued Real Estate Appraiser License No. AR030240 to Respondent. On February 1, 2012, OREA served an accusation on Respondent, alleging violations of the laws and regulations related to acting as a licensed real estate appraiser.

4. Effective January 7, 2013, OREA revoked Respondent's real estate appraiser license. The revocation was stayed for two years, and the license was placed on probation on terms and conditions that included a 45-day suspension, cost order of \$3,000, fine of \$5,000, and continuing education courses. The license discipline followed Respondent's execution of a stipulated settlement agreement, wherein Respondent admitted the truth of every charge and allegation in the accusation.

5. In the OREA matter, Respondent admitted violating the Rules of the Uniform Standards of Professional Appraisal Practice (USPAP) as follows: 1-2(e)(i), 1-3(b), 2-(b)(iii), and (b)(ix) (failure to identify zoning); 1-2(e)(i), 2-1(a), and 2-2(b)(viii) (failure to identify relevant property characteristics, to wit, misstated condition of property); 1-2(e)(i) and 2-2(b)(iii) (failure to identify relevant property characteristics, to wit, misrepresentation of condition); 1-5(a) and 2-2(b)(viii) (failure to analyze contract price); 1-1(a) (failure to employ recognized methods and techniques); 1-1(b) (commission of substantial errors); and failure to comply with the conduct section of the USPAP Ethics Rule; in conjunction with California Code of Regulations, title 10, sections 3701, 3702 and 3721.

6. The violations concerned Respondent's appraisal of a residential property located at 2232 Wilcox Avenue in San Pablo. On May 29, 2007, Respondent appraised the fee simple interest in the Wilcox property as \$335,000. The allegations Respondent admitted included the following:

The property improvements consisted of a 79-year-old, 1334 square foot, 3 bedroom, 2 bathroom, single-family residence situated on an R-3 (Multi-Family Residential) zoned site and a 5,750 square foot lot with a 450 square foot garage/storage space. The purpose of the appraisal was to secure financing for the property's buyer.

The house sold for \$254,000 in June of 2007. After the sale and during a major renovation project, the owners discovered that the home had to be demolished due to extensive dry rot and termite damage. Eventually, the lender foreclosed on the property and in July of 2009, it sold as a vacant lot for \$37,500.

Respondent's 2007 appraisal report contained significant errors of omission and commission and violated the provisions of USPAP as indicated below. Respondent improperly identified the zoning of the property, failed to consider property uses other than single family residential, grossly misrepresented the conditions of the improvements, and failed to analyze the disparity between the contract price and her market value opinion, resulting in an overvaluation of the subject property.

7. Real estate licensees are required, as are real estate appraisers, to fully disclose information to clients, lending institutions and others. They are required to accurately and completely fill out important documents and sign them under penalty of perjury. The failure to perform such tasks, or their negligent completion, can subject a real estate salesperson to license discipline. Therefore, the discipline imposed upon Respondent's real estate appraiser license was for acts, which if done by a real estate licensee, would be grounds for discipline of a real estate license. And the discipline occurred in the context of a hearing process that included due process protections.

8. Respondent failed to notify the Bureau of the discipline imposed by OREA upon her real estate appraiser license.

Respondent's evidence

9. In her Confidential Interview Statement, Respondent wrote that Chase Bank had complained to OREA that she had over stated the condition of the Wilcox property and that "there was a discrepancy for zoning between appraiser data source and the City record" in her report. Respondent testified that she made errors in her report; there was damage to the structure that she did not see. The exterior walls were obscured by various items, and because of this, she did not take photographs. Now, she would take the photos and explain in her report. In addition, Respondent reported a five-car garage on the property because there were five doors on the garage. The city's records show a four-car garage, and she failed to note the discrepancy in her report. Now, she would do so.

In sum, Respondent learned from this experience and now ensures that her appraisal reports are more accurate. She has completed the 15 hours of education required for the OREA probation. Since 2007, Respondent has completed approximately 1,000 appraisals and has had no other problems. She is very sorry for making errors in her appraisal report. Further, Respondent asserts that she was unaware that she was required to report the OREA discipline to the Bureau.

10. Respondent has completed approximately 100 real estate transactions since 1998, and two since the OREA discipline was imposed. Her real estate license is important to her as a source of income. Respondent represented that it would be difficult for her to pay the costs of this case, because her income is down. She did not know, however, what amount of costs Complainant was requesting that she pay. She is paying the OREA costs pursuant to a payment plan.

11. As regards volunteer activities, Respondent sings in a chorus that sometimes raises money for non-profits.

12. Jeffen Mok is Respondent's son. He testified that she is very honest, professional and ethical. Henry Lee (no relation) is a real estate broker. He knows Respondent to be a professional agent. She told him about the OREA discipline sometime in

the last six months when she brought a client to his office. She expressed remorse for her actions.

13. In a letter dated December 3, 2013, Lawrence Hong, Respondent's supervising broker, wrote that he is fully aware of the OREA action. He wrote that Respondent "has been an exemplary real estate salesperson." Chong opined that Respondent "is a good agent, a hard worker" Further, he would be "willing to support her and keep her," and "would closely supervise her if you allowed her to [keep] her real estate license."

14. Reference letters from Xiao Juan Liang, a client, and Allen Yen, a loan processor, were also received in evidence. Both praised Respondent's professionalism.

Cost recovery

15. The evidence provided by the Bureau demonstrated that it has incurred \$1,234.90 in costs of investigation of this case. This amount reflects work performed by three Bureau special investigators and is reasonable.

16. Also in evidence is a declaration signed on November 7, 2013, by Real Estate Counsel Stephanie K. Sese. She declares that she performed a total of 18.05 hours of work on the case, including travel time (to and from Oakland for 4.80 hours) on December 12, 2013. The declaration is signed under penalty of perjury that the contents are true and correct. The information in the declaration is not true and correct because Sese declares that she worked on the case on a date and time that followed the dates she signed it.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (f), provides that the suspension or revocation of a license issued by another state agency is cause for discipline of a real estate license where the discipline ordered by the other agency was for acts that, if committed by a real estate licensee, would be grounds for discipline of a real estate license, and if the licensee was provided certain due process rights in connection with the other agency's action. Cause for discipline exists pursuant to this section by reason of the matters set forth in Findings 3 through 7.

2. Business and Professions Code section 10186.2 requires licensees to notify the Bureau in writing of any disciplinary action taken by another licensing authority within 30 days. Business and Professions Code section 10177, subdivision (d), provides for license discipline for willful disregard or violation of the Real Estate Law. Cause for discipline exists pursuant to these sections by reason of the matters set forth in Finding 8.

3. The purpose of the licensing scheme regarding real estate salespersons is protection of the public. The OREA proceedings demonstrated that Respondent issued an appraisal report that was inaccurate, harming those who relied upon its accuracy.

Respondent, however, acknowledged her mistakes and retained her real estate appraiser license pursuant to probationary conditions. Given the totality of the evidence and circumstances, the same result is appropriate here. It is concluded that the issuance of a restricted salesperson license for a period of two years is sufficient to protect the public interest.

Costs

4. Pursuant to Business and Professions Code section 10106, a licensee found to have violated the Real Estate Law may be required to pay the reasonable costs of the investigation and enforcement of a case. Section 10106, subdivision (c), provides, in pertinent part:

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 The costs shall include the amount of investigative and enforcement costs up to the date of the hearing

Here, evidence of a portion of the costs was presented in a declaration, signed under penalty of perjury on November 7, 2013, by Real Estate Counsel. Seen in a light most favorable to the declarant, it could be inferred that the costs alleged to have been incurred on December 12, 2013, were not deliberately misrepresented, but instead were "good faith estimates" of costs expected to be incurred. On the other hand, the declaration is a legal document, signed under penalty of perjury, by an attorney who should be held to the highest standard when signing official documents. And costs for time spent on the hearing date are not recoverable under the statute; the time for recoverable costs stops before the hearing convenes. All things considered, it is determined that the cost declaration from Real Estate Counsel shall be disregarded and no attorney's fees/costs will be awarded.

As set forth in Finding 15, the reasonable costs of investigation and enforcement in this matter are \$1,234.90.

5. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court held that licensing boards must exercise their discretion in fashioning cost awards to ensure that they do not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. The court set forth factors to be considered, which include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. None of these factors militate in

Respondent's favor. Her mere assertion of lack of ability to pay is insufficient to reduce the amount, which is reasonable. Respondent shall be ordered to pay \$1,234.90.

ORDER

All licenses and licensing rights of Respondent Olivia Lee under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:


1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted

licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall pay \$1,234.90 to the Bureau of Real Estate for the costs of investigation and enforcement of this case. Such amount shall be paid in full before any restrictions are removed.

DATED: January 8, 2014.



MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings