

FILED

AUG 15 2014

BUREAU OF REAL ESTATE

By S Black

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
)
DINA ASNAASHARI,)
)
Respondent.)
_____)

No. H-11639 SF

OAH No. 2014020331

DECISION

The Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings dated July 9, 2014, 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 license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty 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 SEP 05 2014.

IT IS SO ORDERED 8/14/2014

REAL ESTATE COMMISSIONER



Wayne S. Bell

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DINA ASNAASHARI,

Respondent.

Case No. H-11639 SF

OAH No. 2014020331

PROPOSED DECISION

Administrative Law Judge Diane Schneider, Office of Administrative Hearings, State of California, heard this matter on June 10, 2014, in Oakland, California.

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

Respondent Dina Asnaashari was present and represented herself.

The record closed and the matter was submitted on June 10, 2014.

FACTUAL FINDINGS

1. Complainant Robin S. Tanner filed this Accusation in her official capacity as a Deputy Real Estate Commissioner for the Bureau of Real Estate, State of California (Bureau).
2. Dina Asnaashari (respondent) is presently licensed as a real estate salesperson. Her license was originally issued on August 13, 2008, and will expire on August 12, 2016, unless renewed. Respondent is not, and has never been, licensed as a real estate broker.
3. On August 10, 2012, respondent entered into a property management agreement with a former client, N.S., who resided in Morocco. N.S. paid respondent a fee to locate a tenant for his property located at 1699 Laguna Street, Concord, California.
4. Respondent located tenants for the property, C.S. and N.J. On October 26, 2012, respondent received trust funds from the tenants in the amount of \$2,416. The funds

represented payment for the security deposit and rent for the subject property. Respondent deposited the trust funds into her personal bank account at Citibank.

The following day, the tenants decided not to rent the property and requested a refund. On November 2, 2012, respondent issued a refund to the tenants in the amount of \$2,416.

5. Respondent engaged in the business of, and acted in the capacity of, a real estate broker within the meaning of Business and Professions Code¹ section 10131, subdivision (b), when she solicited prospective tenants, negotiated a lease, and accepted trust funds from tenants in connection with the rental of the subject property.

6. At the time of the acts described in Factual Findings 3 through 5, respondent's employing broker was Keller Williams Realty/CTO Realty, Inc. Respondent committed the acts set forth below without the knowledge, supervision or consent of her employing real estate broker or her employing corporate real estate broker. Respondent was terminated by her employing broker due to her conduct.

Respondent's evidence

7. Respondent testified with credibility and candor regarding her misconduct and her steps to rehabilitate herself. At the time of the incident she did not realize that she needed a broker's license or to be supervised by a broker in order to perform property management tasks such as locating tenants and collecting rent.

Respondent is genuinely sorry for her misconduct. Respondent has taken this incident "to heart." She has learned that she must be extremely vigilant in understanding her duties and obligations as a licensee. Respondent explained, however, that her actions were motivated by a desire to help an old client, rather than a desire for personal profit. Respondent was paid \$700 for her work, which was a small sum of money given the time that she spent locating a tenant for the property.

8. Severio Pellicano, respondent's current employing broker, offered his unqualified support for respondent's continued licensure. He attested to respondent's integrity as well as the careful attention she brings to her work. Pellicano also praised respondent for her skills as an advocate on behalf of her clients. Pellicano is willing to supervise respondent should she be issued a restricted real estate salesperson license.

9. Respondent has overcome the challenge of having polio since she was a young child. She was raised with an attitude that she could achieve anything. Respondent impresses as someone who has lived her life consistent with this belief.

¹ All further references are to the Business and Professions Code, unless otherwise indicated.

10. Respondent loves her work as a real estate salesperson. She particularly enjoys bringing people together and using her resources and education to serve her clients. Respondent is a single parent of two sons. Her work as a licensee has enabled her to support her sons.

11. Payment of a substantial cost award would constitute a financial hardship to respondent. She must earn enough money to pay for a personal assistant to help her with personal care needs, due to her polio. In addition, she provides support to her sons and her mother. For these reasons, respondent "barely breaks even" after she pays her monthly expenses.

Costs of investigation and enforcement

12. Complainant has incurred costs in the amount of \$2,724.55, in its investigation and enforcement of this matter. The costs include the following items: \$726.50 in investigation costs and \$1,998.05 in Real Estate Counsel costs. In the absence of evidence to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Section 10130 makes it unlawful to "engage in the business of, [or] act in the capacity of" a real estate broker without first obtaining licensure from the Bureau. By reason of the matters set forth in Factual Findings 3 through 5, respondent violated section 10130 when she engaged in the business of a real estate broker without a license. Accordingly, cause exists to discipline respondent's license pursuant to section 10177, subdivision (d).

2. Respondent violated section 10145, subdivision (a)(1), when she failed to place the trust funds she received from the tenants into a properly maintained trust fund account. Accordingly, cause exists to discipline respondent's license pursuant to section 10177, subdivision (d). (Factual Finding 4.)

3. Respondent's license is also subject to discipline pursuant to section 10176, subdivision (e), based upon her commingling of trust funds with her personal funds. (Factual Finding 4.)

4. It was not established that respondent's conduct involved fraud or dishonesty, or that she failed to timely return the trust funds to the tenants. Accordingly, cause for discipline does not exist pursuant to section 10177, subdivision (j), or California Code of Regulations, title 10, section 2831.

Disciplinary considerations

5. In determining the appropriate discipline, the central question is whether or not respondent is substantially rehabilitated from her misconduct. The criteria used by the

Bureau in evaluating a licensee's rehabilitation are set forth in California Code of Regulations, title 10, section 2912. The paramount concern is not whether a licensee has satisfied every criterion, but whether a licensee is rehabilitated to the extent that she can be trusted to discharge her duties as a real estate salesperson in a manner consistent with public safety.

Based upon the matters set forth in Factual Findings 7 through 11, it is determined that while respondent recently committed misconduct, she established sufficient rehabilitation to allow her to retain her salesperson license on a restricted basis. Among the factors considered in making this determination are as follows: Respondent's misconduct appears to be an isolated instance that stemmed from her desire to help a former client and her lack of awareness of her obligations as a licensee, rather than an intention to circumvent real estate laws for personal gain. Respondent takes full responsibility for her misconduct and is genuinely sorry for her actions. She refunded the security deposit and rental funds that she received from the tenants.

The testimony of Pellicano established that since her misconduct respondent has steadfastly complied with her duties and obligations as a licensee. Pellicano's high regard for respondent's integrity and trustworthiness suggests that respondent's misconduct will not be repeated, and he is willing to assume additional supervisory responsibilities should respondent be allowed to retain her license on a restricted basis. In areas outside of work, respondent has worked hard to support her children and overcome a variety of challenges she has faced by reason of her polio.

Based upon the evidence presented it is extremely unlikely that respondent will engage in misconduct in the future. Accordingly, it is determined that public safety will not be imperiled if respondent continues to hold her real estate salesperson license on a restricted basis.

Cost recovery

6. Section 10106 provides that a licensee found to have violated licensing laws may be ordered to pay the Bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In determining the extent to which costs will be ordered, the following factors have been considered: whether respondent succeeded in getting the charges dismissed or the severity of discipline reduced, whether respondent presented a "colorable challenge" to the proposed discipline, whether respondent possessed a "subjective good faith belief" in the merits of her position, and whether respondent is financially able to pay such costs. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Additionally, under *Zuckerman*, the board must not assess full enforcement costs when to do so would penalize an individual who has committed some misconduct, but who has used the hearing process to reduce the severity of the discipline imposed. (*Ibid.*)

In the instant case, respondent used the hearing process to submit evidence demonstrating that revocation of her license is not warranted. Respondent also presented evidence that any substantial award of costs will constitute a financial hardship. For these reasons, it is determined that cause exists to reduce the Bureau's cost recovery to the sum of \$1424.55. This represents a reduction of \$1,300 from the amount requested by complainant.

ORDER

All licenses and licensing rights of respondent Dina Asnaashari 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 three 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 these conditions, the Commissioner may order the suspension of the restricted license until respondent presents evidence of compliance. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
6. Respondent shall pay the Bureau's reasonable costs of investigation and enforcement in the amount of \$1,424.55.

DATED: July 9, 2014



DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings