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FILED

DEC 17 2015

BUREAU OF REAL ESTATE

By *hdw*

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	No. H-11782 SF
HOME LOAN SERVICES CORP., and)	
KEITH CHARLES KNAPP,)	OAH No. 2015020917
)	
Respondents.)	

DECISION AFTER REJECTION

This matter came on for hearing before Regina Brown, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, State of California, in Oakland, California, on July 20, 2015. Real Estate Counsel John W. Barron represented Complainant Robin S. Tanner, in her official capacity as a Deputy Real Estate Commissioner with the Bureau of Real Estate ("Bureau").

Respondent KEITH CHARLES KNAPP ("KNAPP") was present and represented himself and Respondent HOME LOAN SERVICE CORPORATION ("HLSC") (collectively "Respondents").

Oral and documentary evidence was received, and the case was submitted for decision on July 20, 2015. On July 31, 2015, the ALJ rendered a Proposed Decision ("the Proposed Decision") which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondents were served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy

1 of the Proposed Decision. Respondents were notified that the case would be decided by the Real
2 Estate Commissioner upon the record, the transcript of the proceeding, and upon written argument
3 offered by Respondents and Complainant.

4 Written argument was submitted by Respondents on November 13, 2015, and by
5 Complainant on November 19, 2015.

6 The following shall constitute the Decision of the Real Estate Commissioner in this
7 proceeding:

8 FACTUAL FINDINGS

9 The Factual Findings of the Proposed Decision are adopted as part of this Decision,
10 with the exception of the following:

11 Paragraph no. 6, is amended as follows:

12 "Overall, Respondent KNAPP takes responsibility for his agent's, Keneyor, actions."

13 LEGAL CONCLUSIONS

14 The Legal Conclusions of the Proposed Decision are adopted as part of this Decision,
15 with the exception of the following:

16 Paragraph no. 4 is stricken in its entirety and amended as follows:

17 "4. In determining the appropriate discipline to impose, a number of factors must
18 be considered. First, both licenses were previously disciplined in September 2013. However, it is
19 recognized that the facts that formed the basis for the civil suit occurred before the prior discipline.
20 Second, Respondent KNAPP conceded that he did not adequately supervise his real estate
21 salesperson, Keneyor, thereby allowing borrower Miller to commit fraud in at least 23 real estate
22 transactions. Each of those transactions was done under Respondent KNAPP's real estate broker's
23 license and as a part of Respondent KNAPP's real estate activities. Ultimately, Respondent
24 KNAPP was not simply a passive participant in those transactions because he unquestionably
25 collected broker fees for each one. Respondent KNAPP cannot make a profit from the activity and
26 simultaneously claim innocence. Third, Respondents were found by the jury to be part of a
27 conspiracy. To be part of a civil conspiracy, a coconspirator effectively adopts as his or her own,

1 of a cashier's check made payable to the Bureau of Real Estate. The investigation and enforcement
2 costs must either be mailed to the Bureau of Real Estate, Attention Flag Section, P. O. Box 137013,
3 Sacramento, CA 95813-7013, or delivered to the Bureau of Real Estate, at 1651 Exposition
4 Boulevard, Sacramento, CA 95815.

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6 This Decision shall become effective at 12 o'clock noon on **JAN 07 2016**.

7 IT IS SO ORDERED 12/14/2015
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9 WAYNE S. BELL
10 REAL ESTATE COMMISSIONER

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BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HOME LOAN SERVICE CORPORATION,
and KEITH CHARLES KNAPP,

Respondents.

Case No. H-11782 SF

OAH No. 2015020917

PROPOSED DECISION

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on July 20, 2015, in Oakland, California.

Real Estate Counsel John W. Barron represented complainant Robin S. Tanner, Deputy Real Estate Commissioner, Bureau of Real Estate, State of California.

Respondent Keith Charles Knapp appeared on behalf of himself and Home Loan Service Corporation.

The matter was submitted on July 20, 2015.

FACTUAL FINDINGS

1. Respondent Home Loan Service Corporation (HLSC) is licensed and has licensing rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a corporate real estate broker with the Bureau of Real Estate (Bureau). Respondent Keith Charles Knapp is licensed and has licensing rights under the Real Estate Law as a real estate broker. Both licenses are current. Respondent Knapp is the designated officer of HLSC.¹ Both respondents were licensed and had licensing rights as mortgage loan originators.

¹ As the designated officer-broker, respondent Knapp was responsible for the supervision of the activities, of the officers, agents, real estate licensees, and employees of HLSC, for which a license is required. (Bus. & Prof. Code, § 10159.2.)

2. Complainant Robin S. Tanner, acting in her official capacity as a Deputy Real Estate Commissioner, filed the Accusation against respondents. The Accusation alleges that a final judgment in a civil action based on fraud was entered against respondents and constituted cause for discipline under the Real Estate Law.

3. On May 10, 2011, in the Superior Court of the State of California for the County of Contra Costa, a judgment on special verdict by jury was entered against respondents (and several co-defendants) based on conspiracy to commit fraudulent transfers.² Respondents and their co-defendants were found jointly and severally liable for over \$2 million in compensatory damages, plus costs. Punitive damages of \$300,000 were entered against respondent Knapp and \$500,000 against respondent HLSC. Respondents appealed the judgment. On January 8, 2014, the California Court of Appeal, First Appellate District, issued a decision reducing the award of compensatory damages to approximately \$1.4 million and affirming the remainder of the judgment.³ The judgment is now final.

4. The underlying circumstances of the judgment are as follows:

In 1998, Noreen Cardinale prevailed on a fraud case and obtained a judgment against Daniel Miller, Jr. Cardinale alleged that Miller, Jr., attempted to shield his assets from her attempt to collect on her judgment by obtaining loans on properties he owned and controlled through sham entities and family members and converting the loan proceeds to his own personal use.

In 2008, Cardinale filed a first amended complaint against respondents (and six other defendants) for enforcement of judgments, appointment of receiver, fraudulent transfer and conspiracy to engage in fraudulent transfer, for injunctive relief, and for related remedies against respondents and six other defendants. At all relevant times, respondent HLSC was engaged in the business of making investor funded junior secured subprime loans. Derald Kenoyer was a licensed real estate agent affiliated with respondents. Cardinale alleged that respondents and Kenoyer conspired in the scheme to drain equity from Miller Jr.'s properties and sham entities by brokering approximately 23 loans over a period of approximately 10 years, in exchange for highly remunerative broker commissions. Cardinale alleged that respondent Knapp: (a) allowed Miller and Kenoyer's activities to continue so that he could reap the commissions; (b) knew Kenoyer was arranging the loans without loan applications, reference to lending standards, or regard to borrower's creditworthiness; (c) knew or should have known the borrowing entities were a sham; (d) knew the loans were inadequately secured and being used to get money out of the secured properties; and (e) deliberately breached his duty to supervise and regulate Kenoyer's activities because they were

² A fraudulent transfer under the Uniform Fraudulent Transfer Act, Civil Code section 3439 et seq., involves "a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim."

³ The court of appeals concluded that the record contained no support for a compensatory award in excess of the amount of Cardinale's outstanding judgments.

profitable. The jury found respondents liable for conspiring to engage in fraudulent transfers of Miller, Jr.'s, assets to sham entities under his dominion and control to avoid enforcement of Cardinale's judgments against Miller, Jr.

Respondent's evidence

5. Respondent Knapp testified that jury found conspiracy even though he had never met most of co-defendants. Regarding the conspiracy, respondent contends that the jury was instructed that if it found that Miller committed a fraudulent transfer that harmed Cardinale, then it must determine whether defendants are also responsible for the harm and that if any defendant joined the conspiracy to commit fraudulent transfers by aiding and abetting Miller to hide assets and drain asset equity, then that defendant was liable for all acts done as part of the conspiracy. It was respondent Knapp's understanding that the loans were legitimate loans. He believes that the "jury got it wrong." However, he admits that he did not properly supervise Kenoyer. Also, the court did not find respondent responsible under any other cause of action. He contends that people lose lawsuits every day which is a cost of doing business, and he should not have his livelihood taken away as a result of a lost lawsuit where the jury "just did not like him." He states that he has been licensed over 45 years and is an honest broker.

According to respondent Knapp, there has been a settlement of the judgment, Cardinale has been paid over \$1 million, and no additional payments are due for the compensatory damages. Respondent Knapp paid Cardinale less than \$50,000. Respondent HLSC made no payments toward the compensatory damages. The punitive damages were not part of the settlement agreement and have not been paid yet.

6. Overall, respondent was convincing and persuasive in his testimony. He takes responsibility for his agent's actions.

7. Respondent Knapp was originally issued a broker license in 1974. Respondent HLSC has been licensed as a corporate broker since 1983. Respondent Knapp is also the broker-officer of Last Chance Finance, Inc.

Prior discipline

8. An audit was conducted of the records of HLSC covering a period from January 2010 through October 2011. An Accusation was issued alleging that respondents allowed trust fund accounts to be less than the aggregate liability on two occasions (September 30, 2011 in the amount of \$851.76 and October 31, 2011 in the amount of \$2,022.60). On September 3, 2013, respondent HLSC's corporate real estate broker license was publicly reprovved by the Commissioner for willful disregard of the Real Estate Law, and trust fund handling. Respondent Knapp's real estate broker license was publicly reprovved for failure to exercise reasonable supervision and control over the licensed activities of HLSC.

Costs

9. The Bureau certifies that investigation costs were incurred in connection with the investigation and enforcement of this Accusation in the amount of \$2,457. Respondents did not dispute the costs. The Bureau's costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Pursuant to the Business and Professions Code 10177.5,⁴ the real estate commissioner may suspend or revoke the license of any licensee when a final judgment is obtained in a civil action against the licensee upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a real estate license is required.
2. Cause exists to take disciplinary action against respondent HLSC's corporate real estate broker license pursuant to section 10177.5, by reason of the final judgment set forth in Factual Finding 3.
3. Cause exists to take disciplinary action against respondent Knapp's real estate broker license pursuant to section 10177.5, by reason of the final judgment set forth in Factual Finding 3.

Disciplinary Considerations

4. In determining the appropriate discipline to impose, a number of factors must be considered. First, both licenses were previously disciplined in September 2013. However, it is recognized that the facts that formed the basis for the civil suit occurred before the prior discipline. It cannot be concluded, therefore, that respondent "failed to learn" from his earlier disciplinary experience. Second, respondent essentially conceded that he did not adequately supervise Kenoyer. Third, while respondent was found by the jury to be part of a conspiracy, it does not appear that respondent Knapp was an active participant. In fact, it is unclear from the jury's verdict to what extent respondent Knapp's liability was based upon his conduct and to what extent it was based upon vicarious liability for the actions of Kenoyer and other defendants. Fourth, respondent has made payments toward satisfying the judgment against him; although he needs to resolve the issue of the punitive damages. This is an indicator of respondent's level of responsibility and good faith. Fifth, there is no other evidence that respondent committed any violations of the licensing law in his over 45 years as a real estate broker. Notwithstanding respondent's speculation on why the jury came to its conclusion (erroneous, in his view), a real estate broker found in a civil judgment to have participated in a conspiracy to commit fraudulent real estate transactions should receive some license discipline.

⁴ All statutory references are to the Business and Professions Code, unless otherwise specified.

Upon consideration of all the facts, it is determined that the public interest would be adequately protected if respondent Knapp were permitted to retain his broker license on a restricted basis. The circumstances of the instant disciplinary action, even when coupled with the earlier one, do not demonstrate that he is unfit to be a real estate broker. Therefore, neither outright revocation of his broker license nor "demotion" to a salesperson license is necessary or warranted. A term of two years under a restricted broker license would be sufficient to ensure that respondent Knapp continues to practice with safety to the public. One appropriate condition of the restricted license would be for him to take and pass the Professional Responsibility Examination.

However, the corporate broker license for respondent HLSC should be revoked. Respondent Knapp failed to provide sufficient evidence to support continued licensure of the corporation, as distinguished from his individual real estate broker license. Furthermore, no payments were made by respondent HLSC toward the compensatory or punitive damages award.

Costs

5. Section 10106 provides that a respondent may be ordered to pay the Bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The Bureau presented evidence of the reasonable costs of investigation and enforcement, by reason of the matters set forth in Factual Finding 9.

Respondents have not objected to the costs or provided any basis for reduction of those costs. (See *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32.) The Bureau is authorized to recover the reasonable costs of investigation and enforcement in the amount of \$2,457, from respondents.

ORDER

1. All licenses and licensing rights of respondent Home Loan Service Corporation under the Real Estate Law are revoked.
2. All licenses and licensing rights of respondent Keith Charles Knapp under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefore 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 Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

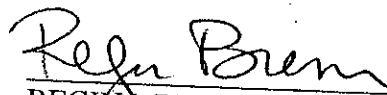
- A. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
- B. 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.
- C. 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 (2) have elapsed from the effective date of this Decision.
- D. 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.
- E. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

F. Respondent shall report in writing to the Bureau of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which respondent engaged during the period covered by the report.

G. Respondent shall pay to the Bureau of Real Estate costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106 in the amount of \$2,457. Respondent shall be permitted to pay these costs in a payment plan approved by the Bureau, with payments to be completed no later than three months prior to the end of the restriction on his license.

DATED: July 31, 2015



REGINA BROWN

Administrative Law Judge

Office of Administrative Hearings