

FILED

JUN 24 2010

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

In the Matter of the Accusation of)
)
PRUDENT REALTY & FINANCIAL SERVICES)
INC., and doing business as Prudent Realty;)
SUSAN MATHEWS, individually, and as)
designated officer for Prudent Realty & Financial)
Services Inc., and doing business as Prudent)
Realty,)
)
Respondents.)

No. H-36232 LA
L-2009100812

DECISION

The Proposed Decision dated May 18, 2010, 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.

Pursuant to Section 11517 (c) (2) of the Government Code, the following Changes are made to the Proposed Decision:

OAH No., page 1, "OAH No. 20090100812" is amended to read "OAH No. L-2009100812".

Proposed Decision, page 1, paragraph 2, line 1, line 2, and line 3 "Matthew" is amended to read "Mathews".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent SUSAN MATHEWS.

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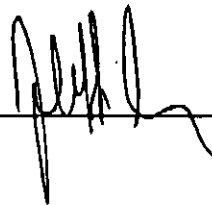
The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on
July 14, 2010

IT IS SO ORDERED

6/23/2010

JEFF DAVI
Real Estate Commissioner



A handwritten signature in black ink, appearing to read 'Jeff Davi', is written over a horizontal line.

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PRUDENT REALTY AND FINANCIAL
SERVICES INC., dba Prudent Realty;
SUSAN MATHEWS as designated officer,

Respondents.

Department No. H-36232 LA

OAH No. 20090100812_____

PROPOSED DECISION

This matter was heard on March 24, 2010, in Los Angeles, California, by Chris. Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

Susan Matthew (Respondent), owner of Prudent Realty and Financial Services, Inc. (Prudent) was present. Matthew and Prudent (collectively, Respondents) were represented by Norman A. Matthews, Esq.

Complainant, Robin Trujillo, Deputy Real Estate Commissioner, was represented by Cheryl D. Keily, Counsel for Department of Real Estate (Department).

Oral and documentary evidence was presented. The record was held open until April 23, 2010, to allow both parties to submit briefs, and to allow Respondents' counsel to submit color copies of exhibits D-H and J-M. Said color copies of those photographic exhibits were thereafter received into evidence. Complainant's brief was received and marked as exhibit 11. Respondent's brief was received and marked as exhibit S. Thereafter, the matter was submitted for decision on April 26, 2010.

During the hearing, the Accusation was amended by deleting the second cause of action.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent is presently licensed as a real estate broker and was initially licensed as a broker in March 1992. Respondent previously held a real estate salesperson's license from approximately 1987 to 1992. There was no evidence presented that Respondent's real estate salesperson's license was ever disciplined.

3. On February 23, 2006, Respondent's real estate broker license was revoked after an Accusation had been filed. However, by Stipulation between the parties, Respondent was allowed to apply for, and was issued, a restricted real estate broker's license. The underlying events leading to the discipline of Respondent's license were not established.
4. As the broker of Prudent, Respondent was responsible for the supervision and control of its activities.
5. In September of 2006, Respondent marketed and sold undeveloped lots in a residential subdivision called "Lake of the Hills" (Hills) in Canyon Lake, Texas. The sales were made to investors in California. The sales were made by Respondents on behalf of the owner/developer of the Hills subdivision. Among the California investors were Maria Ashkar (Ashkar), and Victor and Miriam Lazos (Lazos). In 2006, they purchased lots through Respondents for \$39,990 per lot. Respondent was directly involved in the sales and it was established that she, and not her salespersons, were responsible for these transactions.
6. Prior to the Ashkar and Lazos sales, the real estate market had been "hot" for years. Respondent had been successfully involved in a prior development, "Ensenada Shores," (Shores) with the same builder who was involved in Hill. At Shores, many investors were able to make substantial money in a short period of time as real estate values rose and they resold their lots.
7. Respondent was making substantial money, both for herself and her clients, during the "hot" market. She even purchased a home near the two subdivisions referenced above so that potential investors could come to Texas to see the various properties.
8. During the Shores development, Respondent first met Mr. Gary LeMaster (LeMaster), a broker who resides in Texas. He lived up to his promises and Shores was successfully developed into a finished residential community. Thereafter, LeMaster and Mr. Kilpatrick (Kilpatrick) made Respondent a proposal regarding the Hills development. Eventually, the parties struck a deal, whereby Respondent purchased 55 lots at \$20,000 per lot. The parties also agreed that the developer did not have to make any improvements until Respondent sold at least 33 lots. Respondent thought it would be easy to sell the 55 lots via a "double escrow" procedure whereby she could sell the lots for approximately \$40,000. Respondent did not disclose to the investors that she needed to sell 33 lots before the developer was obligated to perform. As the real estate market began to "cool", Respondent could no longer obtain financing for her investors, and she failed to sell the requisite 33 lots. Thereafter, the developer said he would waive the 33 lot requirement, he closed escrow on less than 33 investors, and then failed to provide the promised improvements. Unspecified litigation then ensued between the parties.

9. It was not established that Respondents showed photos of the Shores development to Ashkar and Lazos and then represented that said completed property was Hills. Ashkar and Lazos invested their money with little research during the "hot" market. However, Respondents did fail to disclose material facts. That is, Respondents failed to disclose their relationship with the developer and that the developer was not obligated to perform unless Respondents could sell 33 lots. Respondents did not act in an honest manner by failing to disclose said information. Instead, she willfully disregarded her obligations as a broker and she was negligent. Respondents contended that what occurred was an "unlikely event." However, this is exactly why they should have disclosed the material facts. If Respondents had done so, and the investors purchased the property anyway, then the investors would have no one to blame but themselves. When Respondents chose to not make the required disclosures, they should have realized the possible consequences if the "unlikely event" occurred.
10. All other allegations and contentions raised by both parties were not established by the evidence or legal authority.

LEGAL CONCLUSIONS AND DISCUSSION

1. Cause exists to suspend or revoke Respondent's real estate broker's license pursuant to Business and Professions Code section 10176, subdivisions (a), and (j) because Respondents failed to disclose material facts and acted dishonestly. Cause does not exist under subdivision (b) because Respondent did not make affirmative false promises.
2. Cause does not exist to suspend or revoke Respondent's real estate broker's license pursuant to Business and Professions Code section 10177, subdivision (h) because Respondent was directly involved in the sales at issue and did not fail to supervise anyone. Cause does exist under subdivisions (d) and (g) because she willfully disregarded the Real Estate Law by negligently performing her duties as a broker.
3. Respondent presently possesses a restricted real estate broker's license. She has already been given a chance to prove herself to the Department as a broker. She has failed in that regard. However, administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal. 4th 763, 785-786.) There was no evidence presented that Respondent would be a threat to the public if she were under the control and supervision of a broker. Thus, the following order will adequately protect the public.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Susan Mathews and Prudent Realty and Financial Services, Inc. under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Susan Mathews pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department 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 one year has 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 Department of Real Estate which shall certify:

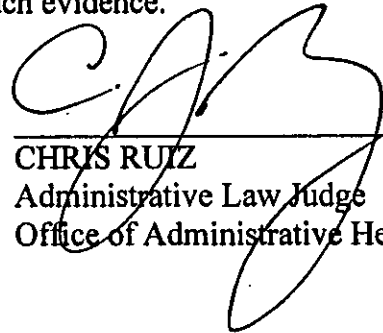
(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(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 Commis-

sioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: May 18, 2010.



CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

1 CHERYL D. KEILY SBN# 94008
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6905

FILED

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DEPARTMENT OF REAL ESTATE

BY: 

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8
9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H-36232 LA
13 PRUDENT REALTY & FINANCIAL)
14 SERVICES INC., and doing busi-) A C C U S A T I O N
15 ness as Prudent Realty; SUSAN)
16 MATHEWS, individually, and as)
17 designated officer for Prudent)
18 Realty & Financial Services)
19 Inc., and doing business as)
20 Prudent Realty,)
21 Respondents.)
22)
23)
24)
25)
26)
27)

19 The Complainant, Robin Trujillo, a Deputy Real Estate
20 Commissioner of the State of California, for cause of Accusation
21 against SUSAN MATHEWS (hereafter Respondent "MATHEWS"),
22 individually, and as designated officer for Prudent Realty &
23 Financial Services Inc., and doing business as Prudent Realty,
24 and PRUDENT REALTY & FINANCIAL SERVICES INC. ("PRUDENT"), and
25 doing business as Prudent Realty, is informed and alleges as
26 follows:
27

1.

1 The Complainant, Robin Trujillo, a Deputy Real Estate
2 Commissioner of the State of California, makes this Accusation
3 in her official capacity.
4

5 2.

6 Respondent MATHEWS is presently licensed and/or has
7 license rights under the Real Estate Law (Part 1 of Division 4
8 of the Business and Professions Code, hereinafter the "Code") as
9 a restricted real estate broker.

10 3.

11 Prior Discipline

12 On or about February 23, 2006, the real estate broker
13 license of Respondent MATHEWS was ordered by revoked by the
14 Commissioner of Real Estate. Respondent MATHEWS was given the
15 right to apply for and be issued a restricted real estate broker
16 license. On or about March 15, 2006, a restricted real estate
17 broker license was issued to Respondent MATHEWS.
18

19 4.

20 Respondent PRUDENT is presently licensed and/or has
21 license rights under the Real Estate Law, as a real estate
22 corporation acting by and through Respondent MATHEWS as its
23 designated broker-officer.

24 5.

25 At all times herein mentioned, Respondents, on behalf
26 of others and in expectation of compensation, engaged in the
27 business, acted in the capacity of, advertised or assumed to act

1 as a real estate broker in the State of California within the
2 meaning of Section 10131 subparts (a) and (d) of the Code,
3 including soliciting prospective sellers or purchasers of real
4 property, negotiating for the purchase, sale or exchange of real
5 property, soliciting borrowers and lenders and negotiating loans
6 on real property.

7 6.

8 At all times relevant herein, Respondent MATHEWS, as
9 the officer designated by Respondent PRUDENT pursuant to Section
10 10211 of the Code, was responsible for the supervision and
11 control of the activities conducted on behalf of Respondent
12 PRUDENT by its officers and employees as necessary to secure
13 full compliance with the Real Estate Law as set forth in Section
14 10159.2 of the Code.

15 7.

16 All further references to respondents herein include
17 Respondents PRUDENT and MATHEWS, and also include officers,
18 directors, employees, agents and real estate licensees employed
19 by or associated with PRUDENT and MATHEWS, and who at all times
20 herein mentioned were engaged in the furtherance of the business
21 or operations of Respondents PRUDENT and MATHEWS and who were
22 acting within the course and scope of their authority and
23 employment.
24

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27 ///

FIRST CAUSE OF ACCUSATION

(Misrepresentation, Fraud and/or Dishonest Dealing)

8.

In or around September, 2006, Respondents marketed and sold individual lots in an undeveloped residential subdivision known as Lake of the Hills in Canyon Lake, Texas 78070 ("the Subdivision") to investors who resided in California ("the California investors"). The sales were made by Respondents on behalf of the owner/developer of the Subdivision.

9.

Among the California investors were Maria Ashkar and Victor and Miriam Lazos who purchased lots in the Subdivision through Respondents for a purchase price of \$39,900 per lot.

10.

The California investors financed a portion of the purchase price for the lots in the Subdivision by obtaining mortgage loans arranged by Respondents at Wachovia.

11.

To induce the California investors to purchase lots in the Subdivision, Respondents made the following false representations:

a. The fair market value of the lots in the Subdivision was \$39,900; and

b. The Subdivision site was to be developed with infrastructure such as streets, an impressive front entrance and

1 a club house in the immediate future greatly increasing the
2 value of the lots purchased by the California investors.

3 12.

4 The true facts were as follows:

5 a. The fair market value of the lots at the time of
6 their sale to the California investors was between \$4,000 and
7 \$9,000; and

8 b. Respondents had no reason to believe that the
9 Subdivision would be developed with infrastructure improvements
10 at any time in the near future.

11
12 13.

13 Respondents knew that the foregoing representations
14 were false and Respondents made them with the intent to induce
15 the California investors to pay significantly more than the true
16 fair market value for the purchase of lots in the Subdivision.

17
18 14.

19 Having made affirmative representations to the
20 California investors concerning the value of the lots in the
21 Subdivision and the likelihood that the Subdivision would soon
22 be developed into a residential housing development, Respondents
23 were under an obligation to disclose to the California investors
24 the following facts materially affecting the value of the
25 property:

26 a. According to the contract entered into between
27 Respondents and the owner/developer of the Subdivision there was

1 no obligation on the part of the owner/developer to sell any of
2 the lots to the California investors unless and until
3 Respondents had closed escrow on at least thirty-three (33) of
4 the fifty-five (55) lots subject to their contract, which event
5 never occurred;

6 b. According to the contract entered into between
7 Respondents and the owner/developer of the Subdivision there was
8 no obligation on the part of the owner/developer to construct
9 any of the infrastructure improvements until Respondents sold
10 thirty-three (33) of the fifty-five (55) lots subject to their
11 contract, which event never occurred.

12 c. Bank of America had earlier refused Respondents'
13 request that it make mortgage loans on lots in the Subdivision
14 on the ground that the lots were worth no more than \$6,000 per
15 lot.

16 c. Mortgage loans obtained by the California
17 investors from Wachovia were supported by appraisals that used
18 as the sole comparable sales earlier sales made by Respondents
19 to other California investors, all of which closed on the same
20 date and none of which had ever been listed on the open market.

21 d. Respondents received a commission in excess of
22 50% of the sales price on the sales made to the California
23 investors.
24

25 15.

26 In reliance on the affirmative representations made by
27 Respondents, as alleged in Paragraph 12, above, and without

1 knowledge of the undisclosed facts materially affecting the
2 value of lots in the Subdivision being marketed by Respondent,
3 as alleged in Paragraph 14, above, the California investors
4 purchased lots in the Subdivision for \$39,900 per lot, a sum far
5 in excess of their true market value.

6 16.

7 The conduct, acts and/or omissions of Respondents, as
8 described herein above, constitutes the making of a substantial
9 misrepresentation, the making of false promise(s) of a character
10 likely to influence, persuade or induce, and/or fraud or
11 dishonest dealing, and is cause for the suspension or revocation
12 of all real estate licenses and license rights of Respondents
13 under the provisions of Code Sections 10176(a), 10176(b) and/or
14 10176(i).

15 SECOND CAUSE OF ACCUSATION

16 (Failure to Register Out-of-State Subdivision)

17 17.

18 Complainant incorporates herein by this reference the
19 allegations contained at Paragraphs 1 through 16, above.
20

21 18.

22 In offering to sell lots in the Subdivision to the
23 California investors Respondents failed to register the
24 Subdivision with the California Real Estate Commissioner prior
25 to offering the lots for sale as is required under the
26 provisions of Section 10249 of the Code.

27 ///

19.

1 The conduct, acts and/or omissions of Respondents as
2 set forth above, are cause for the suspension or revocation of
3 the licenses and license rights of those Respondents pursuant to
4 Code Sections 10177(d) and 10177(g).
5

6 THIRD CAUSE OF ACCUSATION

7 (Failure to Supervise)

8 20.

9 Complainant incorporates herein by this reference the
10 allegations contained at Paragraphs 1 through 19, above.
11

12 21.

13 Respondent MATHEWS ordered, caused, authorized or
14 participated in the conduct of Respondent PRUDENT, as is alleged
15 in this Accusation.

16 22.

17 The conduct, acts and/or omissions, of Respondent
18 MATHEWS, in allowing Respondent PRUDENT to violate the Real
19 Estate Law, as set forth above, constitutes a failure by
20 MATHEWS, as the officer designated by a corporate broker
21 licensee to exercise the supervision and control over the
22 activities of PRUDENT, as is required by Code Section 10159.2,
23 and is cause to suspend or revoke the real estate licenses and
24 license rights of Respondent MATHEWS under Code Sections
25 10177(d), 10177(g) and/or 10177(h).

26 ///

27 ///

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of Respondent
5 SUSAN MATHEWS, individually, and as designated broker for
6 Respondent Prudent Realty & Financial Services, and Respondent
7 PRUDENT REALTY & FINANCIAL SERVICES INC. under the Real Estate
8 Law, and for such other and further relief as may be proper
9 under other applicable provisions of law.

10 Dated at Los Angeles, California

11 this 9 day of September, 2009.
12
13

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15 _____
16 Robin Trujillo
17 Deputy Real Estate Commissioner
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25

26 cc: Susan Mathews
27 Prudent Realty & Financial Services Inc.
Robin Trujillo
Sacto.