

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

MAY 10 2012

DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of)
INFINITY GROUP SERVICES; and.)
KAHRAM ZAMANI, individually, and as,)
designated officer for Infinity Group Services,)
Respondents.)

No. H-36361 LA
OAH No. 2010030250

NOTICE

TO: INFINITY GROUP SERVICES and KAHRAM ZAMANI, Respondents, and JAMI D. BERDELIS, their Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 5, 2012, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 5, 2012, is attached for your information.

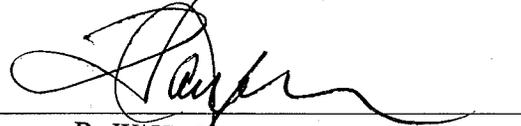
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on January 24-27, and 31, 2011, any written argument hereafter submitted on behalf of Respondents and Complainant.

1 Written argument of Respondents to be considered by me must be submitted
2 within 15 days after receipt of the transcript of the proceedings of January 24-27, and 31, 2011,
3 at the Los Angeles office of the Department of Real Estate unless an extension of the time is
4 granted for good cause shown.

5 Written argument of Complainant to be considered by me must be submitted
6 within 15 days after receipt of the argument of Respondents at the Los Angeles office of the
7 Department of Real Estate unless an extension of the time is granted for good cause shown.

8 DATED: May 6, 2012

9 Real Estate Commissioner

10
11 
12 By WAYNE S. BELL
13 Chief Counsel
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Second Amended
Accusation Against:

INFINITY GROUP SERVICES; AND
KAHRAM ZAMANI, individually, and as
designated officer, for Infinity Group Services

Respondents.

Department No. H-36361 LA

OAH No. 2010030250

PROPOSED DECISION

This matter was heard on January 24-27, and 31, 2011, in Los Angeles, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California.

Kahram Zamani (Respondent or Zamani), owner of Infinity Group Services (Infinity) was present. Zamani and Infinity (collectively Respondents) were represented by Jami D. Berdelis, Esq.

Complainant Maria Suarez, Deputy Real Estate Commissioner (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 to allow both parties to submit closing briefs. Closing briefs were received on March 2, 2011, and were marked for identification as exhibit FFFFF (Respondents' brief) and exhibit 32 (Complainant's brief). Complainant also filed an "Objections to Exhibits" which was marked for identification as exhibit 33 and which was overruled in total. Thereafter, the matter was submitted for decision on March 3, 2011. A decision in this matter was delayed because the ALJ became unavailable from approximately March 1 through August 1, 2011.

On October 24, 2011, Respondents filed a "Motion to Re-Open the Record" (motion). The motion was marked for identification as exhibit GGGGG. On November 29, 2011, the ALJ issued an "Order Regarding Respondents' Motion to Re-Open the Record" (order). The order was marked as exhibit 34 and allowed Complainant an opportunity to respond to the motion. On December 12, 2011, Complainant filed an "Opposition By Complainant to Respondents' Motion to Re-Open the Record" (opposition), which was marked as exhibit 35. Complainant's opposition was overruled. As such, the motion was granted and the record was re-opened. The "Findings of Fact and Conclusions of Law," issued by the United States

District Court, in case number SACV 09-0977-DOC(MLGx)(District Court Order), was marked as exhibit 36 (and is physically attached to exhibit GGGGG in the record) and was admitted into evidence. The District Court Order is relevant. However, Complainant's contention that the District Court Order should not result in a finding of collateral estoppel is correct.

FACTUAL FINDINGS

1. Complainant brought the Seconded Amended Accusation in her official capacity. During the hearing, the Second Amended Accusation was amended by interlineation, which resulted in the second cause of action being deleted.
2. Zamani is presently licensed as a real estate broker and has been since 2000. He initially began his career in real estate in 1992 and he became licensed as a real estate salesperson in 1996. There was no evidence presented that either Zamani's real estate salesperson or broker license have been previously disciplined.
3. In 2000, Respondent opened Infinity. At that time, Infinity brokered loans through other lenders. That is, the company acted as a mortgage broker between the consumer and the lending financial institution. In 2003, Infinity established its own lines of credit, in order to act as a "mortgage banker" rather than a "mortgage broker." In other words, rather than brokering the financing of a mortgage, Infinity began directly funding mortgages.
4. In 2004, Respondents obtained a California Financial Lenders license (CFL). Respondents are also licensed by the California Department of Corporations.
5. In 2007-2008, the overall real estate market dropped dramatically. All of Infinity's lines of credit became unavailable because many of those creditor went out of business or suffered severe losses. At that point, Respondents changed the type of real estate transactions they were performing. That is, Infinity essentially discontinued being involved in the sale of homes and instead began to assist homeowners in refinancing (refi) their homes. This change was necessary because the number of homes being sold in California dropped dramatically and Infinity would have gone out of business had it not changed its business model. It was established that Respondent attempted to comply with the Department's regulations before he entered into the refi business. That is, Respondent sought legal counsel in an attempt to make sure he was complying with California real estate law. (See Exhibits A, E, F, and B).
6. In 2007, Respondents obtained a Federal Housing Authority (FHA) license. Respondents began refinancing properties, funding the loans, then selling those loans to other financial institutions.

7. Between November 1, 2008, and February 2009, Respondents offered a service named "Hope to Homeowners" (Hope), pursuant to the Economic Stabilization Act (Act) of 2008, assisted by the Housing and Urban Development (HUD), which allowed the Federal Housing Authority (FHA) to guarantee certain home loans to assist borrowers in remaining in their homes. As Respondents had obtained their FHA license prior to this date, Respondents received advance notice of the Hope program. Respondent had at least one employee take a course in how to underwrite FHA loans, which requires special training as compared to conventional underwriting procedures.
8. The Hope program was designed to work as follows: At the time, many people owed more on their mortgage than their home was worth, otherwise known as being "underwater." As such, many people either abandoned the property or were otherwise unable or unwilling to make payments. Hope was intended to modify these people's mortgages and keep people in their homes by way of lower payments. Under the program, if the real estate market improved, the lender would earn a percentage of the property's increase in value (equity).
9. Respondents offered a loan modification program similar to the federal program and advertised their services on southern California radio stations. In sum, Respondents charged an upfront fee of \$995.00 in order to compile a homeowner's financial information and to solicit a loan modification from the homeowner's lender. Respondents submitted many requests for loan modifications to various lenders.
10. The Hope program was a complete failure. Almost all lenders in the United States choose not to participate in the program promoted by the federal government. In part, the failure of the program was due to the financial problems many lenders were having at that time. (See Exhibit UU.) The lenders' failure to participate in the program was not anticipated by the vast majority of experts in the financial industry. Many of Respondents' customers began complaining when their loans were not modified. These complaints occurred mainly between December 2008 and January 2009. Respondents discontinued their "Hope to Homeowners" offering in early February 2009. Approximately 1641 homeowners signed up for the "Hope to Homeowners" program and paid \$995.00 to Respondents. Respondents refunded approximately 700 customers their upfront fee of \$995.00.
11. After the failure of Respondents' Hope program, which depended on a lender's cooperation in order to modify an existing loan, Respondents began offering to assist homeowners in refinancing their existing mortgage. Respondents again charged \$995.00 as an upfront fee. Respondents established lines of credit with which they intended to fund the offered refinanced loans. Almost immediately, Respondents were inundated with customers. Thus, Respondents' lines of credit became insufficient to fund Respondents' numerous loans. As such, Respondents began selling said loans, the vast majority of these loans being sold to Citibank. Initially,

- Citibank "bought" and funded loans submitted by Respondents within three to five days.
12. In June 2009, Citibank stopped purchasing mortgage loans within three to five days. Instead, Citibank changed its policy and required approximately one month to review loan paperwork, prior to its purchase of said loan. As a result, Respondents were unable to fund some loans at the interest rate promised by Respondents. Approximately 686 homeowners participated in Respondents' refinance program.
 13. Respondents contended that they were attempting to performing refis with the Hope, and thus they could rely solely on their CFL license and did not need to comply with Department rules. Respondents' argument has some merit, but the overall evidence established that "loan modifications" were being offered. Whether the "modification" was to be achieved via a new loan or via a modification of an existing loan is a distinction without a difference. The fact remains that Respondents were licensed by the Department at that time and were responsible for complying with Department regulations regardless of whether or not they were utilizing their Department license or their CFL license. For example, if Respondents were involved in the importation of illegal drugs, their licenses could be disciplined even though the Department license was not directly utilized during the commission of the crime.
 14. During this time, Respondents' were doing business as "Hope to Homeowners" which they did not report to the Department. Zammani acknowledged this error and expressed remorse at hearing.
 15. Another major issue is whether Respondents were utilizing their CFL license, or their Department license, prior to the time they received the Department's no objection letter. In December 2008, Respondents submitted an "Advance Fee Agreement" to the Department for approval. In order for Respondents to legally be able to collect fees under California real estate law, they must use a form approved by the Department. Respondent's form was approved on January 23, 2009. Complainant contends this approval was "sent in error" and that in reality Respondents' form was not approved until February 11, 2009. It was established that Respondents were entitled to rely on the January 23, 2009 approval letter even if it was sent in error. Ultimately, the Department authorized Respondents to collect advance fees up to \$3990. Respondents only received advance fees of \$995. The fact that Respondents sought a "no objection" letter in December 2008, further establishes that they were utilizing their Department licenses in order to process the loan modifications. Otherwise, Respondents would not have applied for a "no objection" letter at that time had they truly believed they were utilizing only their CFL license.
 16. Respondents' business closed when it was seized by the Federal Trade Commission (FTC). The Department audited Respondents' books covering the period from May 1, 2006, to July 31, 2009. The Department alleged trust account violations, failure to keep accurate records, failure to perform monthly reconciliation, allowing two

unlicensed employees access to the trust account, the commingling of trust account funds with general account funds, and the failure to maintain broker-salesperson agreement(s).

17. Zamani testified at hearing. He is very knowledgeable regarding real estate and finance. He presented as an honest and ethical person. The Hope to Homeowners program was widely touted throughout the real estate industry, and had the federal government's approval and endorsement. The fact that lenders ultimately chose not to participate in the program and modify loans was unexpected, especially since the federal government was insuring said loans. The financial crisis that affected almost all of the banks in the United States was unprecedented in recent history, as was the financial industry's almost complete discontinuation of buying real estate loans. Respondent is married and has a 3 year old child. His knowledge of the general real estate market and the Hope program was outstanding. He clearly explained the process and he clearly established that he is very knowledgeable regarding real estate.
18. The District Court Order ordered a limited injunction that subjects Zamani to monitoring and compliance requirements as specified by the FTC. Zamani was also ordered to pay restitution for the revenues earned by Infinity from April 2009 to June 2009.

First Cause of Action

19. Respondents are charged with violating Business and Professions Code sections 10085¹ (collecting advance fees) and California Code of Regulations (Regulations), title 10, section 2970. Complainant alleged that Respondents improperly charged and accepted \$995 in advance fees from eight clients prior to submitting their written agreement form to the Commissioner for his review and the issuance of a "no-objection" letter issued by the Commissioner if he found the agreement form acceptable. Complainant alleged that eight homeowners (as described in paragraph 9, subdivisions (a) to (h)) paid the advance fee of \$995. These alleged loans took place between December 31, 2008, and April 1, 2009. Of these eight consumers, only two testified, and only one of those consumers paid \$995 prior to January 23, 2009. Thus, only one violation was established. In mitigation, in December 2008, Respondents submitted their proposed advance fee agreement and advertising (agreement) documentation to the Department. At that time, Zamani also sought legal counsel in an attempt to comply with Department regulations. Respondents were ultimately allowed to collect up to \$3,990 in advance fees. Overall this violation was minor. (See Factual Finding 15.)

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

Second Cause of Action

20. This Cause of Action was dismissed by Complainant during the hearing.

Third Cause of Action

21. This cause alleged various audit violations. The Department's auditor audited the period of time from May 1, 2006, to July 31, 2009. She testified that it was impossible to determine if any trust violations occurred between May 2006 and November 2008. These violations were not established. Overall, the Department's auditor's testimony was unconvincing. For example, she testified that she could not determine when and if Respondents "earned" the advance fee because Respondents "failed" to provide the necessary documentation. However, the auditor's audit was hampered by the fact that many of the necessary documents required for a complete audit were seized by the Federal Trade Commission (FTC). The evidence did not establish why the auditor did not attempt to obtain said records from the FTC. She also testified that, due to the records being removed by the FTC, she could not determine if any funds were not initially placed in the trust fund account. She acknowledged that once the fee is "earned" the broker may move the fee to the general account without notifying the consumer. Additionally, the auditor is not a licensed certified practicing accountant and she had difficulty performing a simple addition problem during the hearing. Further, she also appeared, at times, to have trouble understanding the questions asked by the attorneys.

Fourth Cause of Action

22. Complainant contended that Respondents violated Code sections 10131, subdivision (d), 10131.2, and 10137 by employing and/or compensating unlicensed personnel to perform actions which required a license and section 10159.5. for using an unauthorized fictitious business name. Complainant specifically listed six employees by name in paragraph 23, subdivisions (a) to (f), of the Second Amended Complaint. Respondent admitted to using an unauthorized fictitious business name. Complainant established that employed and/or compensated unlicensed personnel to perform actions which required a license. In mitigation, Respondents also have a CPL license under which they believed, albeit mistakenly, they were authorized to make the loans at issue. Thus, Respondents failure to utilize license personnel was negligent, rather than intentional.

Fifth Cause of Action

23. Complainant alleged that Respondent Zamani violated Code sections 10159.2 and 10177, subdivisions (d)(g) and (h), for failing to supervise the overall conduct of Respondent Infinity. This allegation was not established. Zamani was intimately involved in the daily activities at Infinity.

Other Findings

24. 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 Zamani's real estate broker's license pursuant to the first and fourth causes of actions as alleged in the Second Amended Complaint and Business and Professions Code sections 10159.2, 10131, subdivision (d), 10131.2, 10137, 10159.5, 10085, and California Code of Regulations, title 10, 2970, individually and jointly. Cause does not exist to discipline Zamani's real estate broker's license based on any of the other causes of action as stated in the Second Amended Complaint.
2. Respondent presently possesses a estate broker's license. 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. Zamani has suffered great financial loss and he is being supervised by the FTC. Thus, the following order will adequately protect the public. (Factual Findings 1-24.)

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Infinity Group Services and Kahram Zamani, individually, and as designated officer, for Infinity Group Services are revoked; provided, however, a restricted real broker license shall be issued to Infinity Group Services and Kahram Zamani 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

Not Adopted

Not Adopted

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.

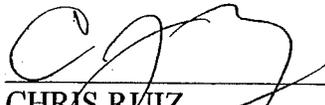
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(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 Commissioner 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: April 5, 2012.


CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings