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FILED

APR 11 2016

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

| | | |
|--------------------------------------|---|----------------|
| In the Matter of the Accusation of |) | NO. H-37278 LA |
| |) | L-2011051202 |
| AMERICAN FRONTIER |) | |
| FINANCIAL GROUP, doing business |) | |
| as New Century Realty; and |) | |
| SULIMAN A. SULIMAN, indivi- |) | |
| dually, and as designated officer of |) | |
| American Frontier Financial Group, |) | |
| |) | |
| Respondents. |) | |
| |) | |

ORDER STAYING EFFECTIVE DATE

On February 12, 2016, a Decision was rendered in the above-entitled matter to become effective March 10, 2016. On March 3, 2016, the effective date was extended for a period of 30 days to April 11, 2016, in order to permit Respondents American Frontier Financial Group and Suliman A. Suliman ("Respondents") to file a petition for reconsideration. The current effective date for the Decision is April 11, 2016, at noon. Respondents filed their Petition for Reconsideration today, April 11, 2016, at 11:00 a.m.

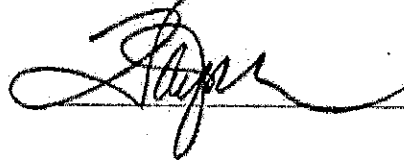
IT IS HEREBY ORDERED that the effective date of the Decision of February 12, 2016, which was previously stayed for a period of 30 days to April 11, 2016, is now stayed for an

1 additional period of 10 days to allow the Commissioner to consider Respondents' Petition for
2 Reconsideration.

3 The Decision of February 12, 2016, shall become effective at 12 o' clock noon on,
4 April 21, 2016.

5 DATED: 4/11/2016

6 WAYNE S. BELL
7 REAL ESTATE COMMISSIONER

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FILED

MAR 03 2016

BUREAU OF REAL ESTATE

By John Guite

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

| | | |
|--------------------------------------|---|----------------|
| In the Matter of the Accusation of |) | NO. H-37278 LA |
| |) | L-2011051202 |
| AMERICAN FRONTIER |) | |
| FINANCIAL GROUP, doing business |) | |
| as New Century Realty; and |) | |
| SULIMAN A. SULIMAN, indivi- |) | |
| dually, and as designated officer of |) | |
| American Frontier Financial Group, |) | |
| |) | |
| Respondents. |) | |
| |) | |

ORDER STAYING EFFECTIVE DATE

On February 12, 2016, a Decision was rendered in the above-entitled matter to become effective March 10, 2016.

IT IS HEREBY ORDERED that the effective date of the Decision of February 12, 2016, is stayed for a period of 30 days (1) to allow Respondents AMERICAN FRONTIER FINANCIAL GROUP and SULIMAN A. SULIMAN to file a petition for reconsideration.

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The Decision of February 12, 2016, shall become effective at 12 o' clock noon on
APR 11 2016, 2016.

DATED: MARCH 8, 2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE BUREAU OF REAL ESTATE

FILED

STATE OF CALIFORNIA

FEB 19 2016

BUREAU OF REAL ESTATE

By *Steve Surins*

In the Matter of the Accusation of)
)
 AMERICAN FRONTIER FINANCIAL)
 GROUP, doing business as New Century)
 Realty; SULIMAN A. SULIMAN,)
 independently and as designated officer of)
 American Frontier Financial Group,)
)
 Respondents.)

CalBRE No. H-37278 LA

OAH No. 2011051202

DECISION

The Proposed Decision dated January 22, 2016, 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 one or more real estate licenses, but the right to a restricted broker 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 MAR 10 2016.

IT IS SO ORDERED 2/12/2016

REAL ESTATE COMMISSIONER

Wayne Bell
WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

AMERICAN FRONTIER FINANCIAL
GROUP, doing business as New Century
Realty; SULIMAN A. SULIMAN,
individually and as designated officer of
American Frontier Financial Group,

Respondents.

Case No. H-37278 LA

OAH No. 2011051202

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on July 22-24 and October 30, 2015, in Los Angeles.

Cheryl D. Keily, Counsel, represented Robin Trujillo (complainant).

Respondents Suliman A. Suliman and American Frontier Financial Group were represented during the hearing by Steven H. Haney, Esq., and Ryan C. Duckett, Esq., and in their closing brief by Joshua S. Stambaugh, Esq., and Ryan C. Duckett, Esq.

The record was held open at the conclusion of the hearing for the parties to submit closing argument briefs. The ALJ thereafter reopened the record for further information. Those events are described in the ALJ's order dated December 29, 2015. The record was closed and the matter submitted for decision on January 8, 2016.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant filed the Accusation in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate (Department), which was subsequently reorganized and is now known as the Bureau of Real Estate (Bureau). Respondents filed a Notice of Defense that denied the allegations and demanded a hearing to contest the Accusation.

2. Respondent American Frontier Financial Group (AFFG) is a corporation licensed by the Bureau as a corporate real estate broker. It has been so licensed since October 1993. AFFG was, and is, authorized to use the fictitious business name New Century Realty. Official notice is taken that respondent AFFG's license will expire on October 6, 2019, unless renewed.

3. Respondent Suliman A. Suliman (Suliman) has been licensed by the Bureau as a real estate broker since April 1994. Prior to that, and beginning in September 1992, respondent Suliman was licensed as a real estate salesperson. He has been the designated broker for AFFG since 1994. Official notice is taken that respondent Suliman's broker license will expire on April 2, 2019, unless renewed.

4. Respondent AFFG is also licensed by the California Department of Business Organizations (DBO) as a finance lender.

The Complaint by Mohammed Hai Regarding Respondent Suliman

5. Mohammed Ahmed Hai (Hai) was employed by respondent AFFG from early 2008 through February 2009. Respondent Suliman was his supervisor. Hai is licensed by the Bureau as a real estate broker, doing business as "Hai Real Estate and Finance." He is also trained as an accountant and as a tax preparer. Hai performed various tasks for respondents related to bookkeeping and account managing, but his broker license was never formally placed with AFFG.

6. In February 2009, Hai filed a written complaint with the Bureau (when it was known as the Department). In his complaint, Hai alleged that while employed at AFFG, Suliman had consummated two real estate transactions by using Hai's name as one of the real estate brokers in the transactions, without Hai's knowledge and consent. Hai abruptly resigned from AFFG either shortly before or after he submitted his complaint.

7. A. Hai's complaint centered around two short sale transactions that were closed in October 2008. One involved property in Los Angeles on Adelpia Avenue (Adelpia) and the other property in Pasadena on Wyoming Street (Wyoming). Commission checks from those transactions were written to Hai Real Estate and Finance but deposited into AFFG's account. The checks were written from an escrow company account in connection with the sale of those two properties. The checks totaled \$25,350. Respondents also received commissions on these two transactions for their work as the mortgage broker.

B. Respondents had listed both properties for sale, negotiated the short sales with the sellers' lenders, and were both the selling and buying brokers. However, because a short sale transaction results in a loss to a seller's mortgage lender, that lender is generally apt to prohibit the same broker from representing both seller and buyer, especially when the same broker is also the mortgage broker, because the possibility of manipulation to the detriment of the seller's lender increases.

C. In fact, the sellers' lenders in the Adelpia and Wyoming transactions conditioned the sales on respondents not being either the sellers' or buyers' agents, because respondents were brokering the mortgage loans. This finding is based on pertinent loan documents as well as Ms. Soriano's audit report and testimony that respondent Suliman had told her that the lenders in both transactions had included that condition for that reason.

D. Complainant contends that respondents used Hai's broker license without his knowledge or consent in order to obtain all the commissions on both transactions, i.e., the real estate sales and mortgage brokerage commissions, and thereby falsely represented Hai as the real estate broker to the lenders on both transactions in order to do so.

8. The two buyers on the Adelpia and Wyoming transactions were frequent clients of respondents. Suliman was in the process of securing those deals, when he suddenly had to travel to Egypt to be with his mother, who was gravely ill and believed to be dying. This presented a crisis in respondent Suliman's personal and professional life and he essentially dropped everything he was doing to be with his mother.

9. While respondent Suliman was in Egypt, he and his wife, Jennifer Perez, had conversations with Mr. Hai during which Hai agreed to act as the real estate broker on both transactions in Suliman's absence. Mr. Hai's agreement and consent to do so was witnessed by Ms. Perez, as well as another AFFG employee, Bassem Hajar, both of whom credibly testified to this fact during the hearing. Mr. Hai's agreement to act as the broker on both transactions was also demonstrated by the fact that his name and broker information was placed on the Residential Purchase Agreements (RPAs) used for both transactions. Those RPAs were created using proprietary WINForms software, and the broker name and identifying information can only be populated in the relevant data fields by access to the user password. Mr. Hai had not shared his password with anyone, meaning only he could have created the RPAs showing himself as the broker for both transactions. Moreover, as the bookkeeper and account manager for AFFG, Hai had unlimited access to all financial documents, including commission checks, so it is unlikely that respondent Suliman would have been successful in hiding the two transactions from Hai.

10. A. In reality, Mr. Hai's complaint to the Department was in response to a commission dispute he had with respondent Suliman concerning the two transactions.

B. According to respondent Suliman, he and Mr. Hai had conversations prior to the events in question concerning Hai receiving compensation for broker business brought by him to AFFG. In such cases, respondent Suliman promised to pay him 75 percent of the commissions. However, when Mr. Hai agreed to help respondent Suliman while he was in Egypt, it appears that the two neglected to discuss how much Hai would be compensated. Based on later events, explained below, Mr. Hai had apparently assumed he would receive at least 50 percent of the broker commissions. On the other hand, respondent Suliman had 25 percent in mind, since the clients in question were his and he had done most of the work already.

C. Respondent Suliman returned to the office several weeks later. When Mr. Hai brought the matter of the commissions to respondent Suliman's attention, the two became engaged in a dispute over how much of the commissions Hai should receive. Respondent Suliman offered Hai only 25 percent. He later told the Bureau's auditor investigating Hai's complaint that AFFG was entitled to the broker commissions because it had done the work, a viewpoint which corroborates his offer of only 25 percent to Hai. On the other hand, respondent Suliman persuasively testified that Mr. Hai demanded at least 50 percent of the commissions and that he threatened to report Suliman to the relevant authorities if he refused. Respondent Suliman became upset because he believed he was being extorted. Mr. Hai's anger over not being offered more than 25 percent of the commissions prompted his complaint to the Department and his resignation from AFFG.¹

11. A. There was no evidence presented indicating that the sellers' lenders in the Adelpia and Wyoming transactions were advised that Mr. Hai was an employee of AFFG or that respondents would receive and keep a large portion of the broker sales commissions.

B. Respondent Suliman testified that he deposited the commission checks to respondent AFFG's bank account because it was money earned by AFFG for its clients, and that Hai "only filled out forms." On cross-examination, respondent Suliman testified that there is no law preventing a real estate broker from representing both parties on a short sale transaction; it just must be disclosed to the lender in question. However, there is no evidence that anyone disclosed to the two lenders in question that respondents were the de facto sales brokers on the two transactions, that Mr. Hai was respondents' employee or that Mr. Hai "only filled out forms" but did not do most of the work.

C. The expert real estate broker retained by respondents in this matter, Frank G. DiLauro, testified that, in his opinion, the use of Mr. Hai as a sales broker on both transactions was appropriate, and that it is common for brokers to ask other brokers to help them in such situations. Specifically, Mr. DiLauro opined that by including his name on the RPAs, Mr. Hai became the broker legally responsible for both transactions, and that as long as the lenders were advised of his identity, no law or ethical standard was violated. Mr. DiLauro's opinion was not persuasive, mainly for the information he did not include in expressing his opinions. While it may be common for brokers to ask other brokers to assist them in transactions such as this, Mr. DiLauro did not testify whether in such situations the "assisting broker" is an independent agent (as opposed to an employee of the "referring broker"), the assisting broker gets little or no commission, and that the "referring broker" (here, respondents) would receive and keep a large portion of the commissions. Mr. DiLauro said nothing about what disclosures would be made to the seller's lender in such situations. Finally, Mr. DiLauro did not offer an exact opinion covering the situation here, where the sellers' lenders were advised in paperwork only that one broker (Mr. Hai) was the sales broker, but were not advised that that broker was the employee of the referring broker prohibited from serving as a sales agent or that respondents would receive the commissions.

¹ It is interesting to note that Mr. Hai settled the civil lawsuit he subsequently filed against respondents for essentially 50 percent of the commissions in question.

12. Under these circumstances, it was established by clear and convincing evidence that respondents made misrepresentations and false statements to the two lenders in question that Mr. Hai was the sales broker on these transactions and that (by virtue of who the checks were made payable to) he was the sole recipient of broker sales commissions on the two transactions.

The Audit of Respondent AFFG's Real Estate Sales Activities

13. Mr. Hai's complaint triggered an audit of respondent AFFG's activities. Chona T. Soriano, an auditor with the Bureau, was assigned the task. Ms. Soriano completed two audits and issued two audit reports. One audit pertained to AFFG's real estate sales activities. The other audit pertained to its mortgage loan activities. The audit period for both audits ran from June 1, 2007, through April 30, 2010. The auditor worked on the audits from approximately April 27, 2010, until September 13, 2010.

14. Ms. Soriano's audit report pertaining to AFFG's real estate activities was completed on August 9, 2010. Ms. Soriano concluded in her report that respondents' real estate activities had violated several provisions of the Real Estate Law, as discussed below.

15. A. No trust account was kept during the audit period for real estate sales transactions. Ms. Soriano concluded that a trust account was required because respondents had accepted moneys from clients and third parties. In that regard, Ms. Soriano concluded that respondents failed to maintain a control record of such transactions in the form of a columnar record in chronological order of all trust funds received.

B. However, respondents were not required to keep a trust account for any transaction pursuant to Business and Professions Code section 10145² or California Code of Regulations, title 10, section (Regulation) 2831, because they did not accept funds belonging to others in connection with a transaction. Instead of accepting funds, respondents' custom and practice was to have all funds immediately placed into a neutral escrow depository. Because they did not accept and keep such funds, there was no requirement to maintain a columnar record of such transactions.

16. A. The audit established respondent AFFG represented Michael Hachem in the purchase of a property in Bell. Ms. Soriano interpreted AFFG records as showing it had received a check for \$5,000 from Mr. Hachem as an earnest money deposit for the transaction on November 6, 2008, and a purchase contract was made on November 18, 2008. Ms. Soriano concluded respondents were required, but failed, to maintain a columnar record for money received and had failed to place said funds in a trust account, for the reasons explained above.

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² Further unspecified statutory references are to the Business and Professions Code.

B. However, it was established Mr. Hachem never paid any earnest money for this deal. Instead, the \$5,000 earnest money deposit noted in the records was paid by respondent Suliman's company, Trinity Tech, Inc., for the benefit of Mr. Hachem. Under these circumstances, no columnar record was required, nor was there any money received by Mr. Hachem to place in a trust account.

17. A. In her review of the records, Ms. Soriano concluded respondent AFFG made statements to sellers it had received earnest money deposits for buyers S. Soble, G. Itani and A. Psaltis, when in fact it did not, in violation of section 10176, subdivision (a).

B. Ms. Soriano's conclusion with respect to these three transactions was reached in the same manner as was her conclusion regarding Mr. Hachem's transaction. Ms. Soriano interpreted the documents as indicating that respondents made such representations to the involved three sellers. However, it was not clearly and convincingly established such representations were made to the sellers, or understood as such by the sellers. No evidence was presented indicating respondents received the earnest money deposits in question, as opposed to the deposits being sent directly to escrow. In fact, respondent Suliman testified the earnest money deposits had been sent to escrow and he advised the involved sellers the checks had been sent to and/or received by escrow. Respondents' expert broker, Mr. DiLauro, testified he did not construe this activity to constitute a misrepresentation, mainly because transactions change over time after the RPAs are executed. No evidence of complaints or contrary information from the involved sellers was presented. Under these circumstances, it was not clearly and convincingly established respondents made misrepresentations to the sellers regarding the earnest money deposits.

18. Based on her review of the Adelpia and Wyoming files, and Mr. Hai's complaint, Ms. Soriano concluded respondents represented to the involved lenders that Hai had acted as the real estate broker on those two transactions, in violation of sections 10176, subdivisions (a) and (i), as well as 10177, subdivision (j). Ms. Soriano's conclusion is substantiated to the extent it is consistent with the findings above concerning Mr. Hai's complaint (Factual Findings 5-12).

19. A. Ms. Soriano found in AFFG's files two sets of RPAs for each of the Adelpia and Wyoming transactions. One set indicated respondents were the real estate brokers on the deals; the other set indicated Mr. Hai was the real estate broker. Ms. Soriano concluded that the second set of RPAs were altered to conceal who was the actual broker on the deals, in violation of section 10177, subdivision (j).

B. Ms. Soriano's conclusion was substantiated by clear and convincing evidence, to the extent it is consistent with the findings above concerning Mr. Hai's complaint. Only the set of RPAs showing Mr. Hai as the real estate broker were actually submitted to escrow and the parties. Respondents kept in the AFFG files the second set of the RPAs showing respondents as the real estate broker to reflect their belief that respondent Suliman had done most of the work to support receiving most of the commissions.

C. Respondents' expert broker, Mr. DiLauro, testified that keeping a second set of RPAs under these circumstances was not improper and did not violate any part of the Real Estate Law. However, Mr. DiLauro did not account for the fact that the lenders were not provided with any information concerning the extent of respondents' involvement as the real estate sales broker on the transactions, despite a condition of the short sale being that respondents could not do so. As discussed above, by submitting the RPAs to the two lenders showing only Mr. Hai as the involved real estate broker, respondents concealed their level of involvement as the sales broker and that they accepted commissions for such work.

20. Ms. Soriano concluded in her audit report that respondent AFFG failed to maintain at its main office the license certificates of two Bureau licensees, I. Rivera and M. Mostafa, in violation of section 10160 and Regulation 2753. Ms. Soriano was not clear in her audit report or testimony as to what she meant. In fact, during her testimony, Ms. Soriano admitted she did not remember the details of this violation. However, respondent Suliman and his wife credibly testified that all salespersons' licenses were posted on the office walls. Respondent Suliman also testified that copies of the salespersons' licenses were kept in the relevant employees' files. He also testified that he provided Ms. Soriano with copies of the involved licensees' certificates twice, which testimony he corroborated with a facsimile transmittal cover sheet showing that the information had been sent to Ms. Soriano. Under these circumstances, it was not clearly and convincingly established that respondents failed to provide Ms. Soriano with the requisite information.

21. Based on the above, Ms. Soriano concluded that respondent Suliman had not adequately supervised AFFG's licensed real estate activities. No other evidence was presented tending to indicate that respondent failed to have systems in place for properly monitoring AFFG's real estate activities or that he failed to exercise reasonable supervision. Ms. Soriano's concerns were based on activities in which respondent Suliman was directly involved, not unknown actions of other employees. Under these circumstances, Ms. Soriano's conclusion was not substantiated.

The Audit of Respondent AFFG's Mortgage Loan Activities

22. The separate audit of respondent AFFG's mortgage loan and short sale activities was completed by Ms. Soriano on September 13, 2010. Ms. Soriano concluded in her report that respondent AFFG's mortgage loan and short sale activities had violated several provisions of the Real Estate Law, as discussed below.

23. No trust account was kept during the audit period for mortgage loan or short sale activities. Ms. Soriano concluded that a trust account was required because respondents had accepted moneys from clients and third parties. However, respondents were not required to keep a trust account for any such transactions, because they did not accept funds belonging to others in connection with those transactions, as explained above concerning the absence of a trust account for their real estate sales activities.

24. A. In at least six files she reviewed, Ms. Soriano was unable to find a copy of a Mortgage Loan Disclosure Statement (MLDS). An MLDS is a statement required by section 10240, on a form approved by the Real Estate Commissioner (Commissioner) pursuant to section 10241 and Regulation 2840, which discloses the information itemized in section 10241, including costs, fees and commissions charged to a borrower.

B. Based on the combined testimony of respondent Suliman and Mr. DiLauro, it was established that, with regard to those six files, respondents completed two separate forms, entitled "Good Faith Estimate" and "Truth-in-Lending Disclosure Statement." Together those forms essentially stated the information required by section 10241, with the exception of the caveat concerning balloon payments required by section 10241, subdivision (h), and the involved real estate broker's license number required by subdivision (i). Thus, despite not stating the required information on a form approved by the Commissioner, the two documents created by respondents stated most of the required information, including a statement of all the fees, costs and commissions being charged to the borrower.

25. A. Three files Ms. Soriano reviewed contained completed MLDS forms that were not signed by the real estate broker or loan agent negotiating the loan or by any licensee. Ms. Soriano concluded that such was required on the MLDS by section 10240.

B. Respondent Suliman testified that on those three occasions, he did not act as the real estate broker involved in the sale of the property, but only as the lender. For that reason, he contends he was not required to sign the MLDS forms in question. However, section 10240 requires "[e]very real estate broker . . . who negotiates a loan to be secured . . . by real property" to submit to the borrower an MLDS form with the required information, and personally signed by the "real estate broker negotiating the loan." In this case, respondents were real estate brokers who negotiated the loans in question, the direct lenders, and thereby required to sign the MLDS forms in that capacity. Moreover, according to Ms. Soriano, and as demonstrated by exhibit 24, the MLDS forms in question were only signed by the borrower and not by any broker. With regard to one of the three MLDS forms in question, as demonstrated by exhibit 24, respondents' names were printed in the signature area where the "broker" was to sign, but no signature was present. This indicates that respondents had intended to complete the MLDS forms and sign them as the responsible broker, but that they simply failed to sign the forms for reasons not established. Respondents cannot escape responsibility for complying with section 10240 by completing and submitted MLDS forms to the borrowers in question, only to complain that another licensee involved in the transaction but who did not complete the MLDS should be responsible.

26. A. The same three files discussed immediately above had MLDS forms which did not disclose that respondents received rebates on loads or yield spread premiums (YSP). A YSP is generally a rebate or commission from a lender to a broker which serves as additional compensation, and therefore must be disclosed to the borrower. Ms. Soriano concluded that the disclosure of such information on the MLDS forms was required by sections 10240 and 10241.

B. Respondent Suliman testified that respondents acted only as the direct lender for the three transactions in question and, as such, they were not receiving any discount or commission as a real estate broker. In a sense, he testified that there were no YSPs generated for these three transactions. For that reason, he testified that no YSP disclosure was required on the MLDS forms in question. Ms. Soriano testified on cross-examination that she did not realize respondents acted only as the lender on those transactions and she seemed to agree that in such a case no YSP disclosure was necessary.

C. Under these circumstances, it was not clearly and convincingly established that the MLDS forms in question were required to have YSP information on them.

27. A. Ms. Soriano also saw that the same three MLDS forms did not contain respondent AFFG's real estate broker license number on them, which she concluded violated section 10236.4, subdivision (b). That provision states that MLDS forms required by section 10240 shall include the involved licensed real estate broker's license number.

B. Respondent Suliman testified that respondents did not act as the real estate sales broker on the three transactions in question, but only the lender. Ms. Soriano was not aware that respondents acted only as the direct lender on these transactions. The identity of the licensee(s) acting as the real estate broker for these three transactions was not established. However, section 10236.4, subdivision (a), in turn refers to section 10235.5, which relates to the requirement that licensed brokers or mortgage loan originators must state their license numbers in loan advertisements. Section 10236.4, subdivision (b), requires that MLDS forms contain the licensee's license number and loan originator's unique identifier, if applicable. These statutes, in concert, indicate that the Bureau licensee involved in brokering the loan must have his/her/its name and license number stated on the MLDS. In this case, respondents should have disclosed their license numbers on the MLDS.

C. Under these circumstances, Ms. Soriano's conclusion was substantiated by clear and convincing evidence.

28. Respondent Suliman's wife, Ms. Perez, who was not licensed by the Department, acted as a loan processor on some of the files that Ms. Soriano reviewed. On a few forms completed by involved lenders, Ms. Perez's name (she now goes by Jennifer Grijalva) was listed as both the "loan officer" and "contact" person for respondent AFFG. However, the forms in question were signed by respondent Suliman. In any event, Ms. Soriano concluded from her review of those documents that Ms. Perez had acted as a salesperson or loan agent for respondent AFFG, and that she was compensated as such. No other evidence suggests that Ms. Perez acted as a loan officer or was compensated for acting in that capacity; respondent Suliman, Ms. Perez (now Grijalva), and Bassem Hajar specifically denied in their testimony that she had done so. Under these circumstances, it was not clearly and convincingly established that Ms. Perez engaged in any activity requiring a license.

29. During the audit, Ms. Soriano requested access to deposit records and bank statements related to appraisal and credit report fees collected by respondent AFFG. She had not been provided with such documents by the time she concluded her audit. She therefore concluded that respondent AFFG failed to retain all required records in violation of section 10148. Respondent Suliman testified that he had no such documents because he paid the appraisal and credit report fees for his clients on the transactions in question, and that no record would be generated since he received no moneys from his clients. Under these circumstances, it was not clearly and convincingly established that respondents failed to maintain and/or retain required records.

30. A. Based on the number of violations she believed had been committed, as described above, Ms. Soriano concluded that respondent Suliman did not adequately supervise AFFG's licensed mortgage activities, in violation of sections 10159.2, 10177, subdivision (h), and Regulation 2725.

B. However, respondents proved that they had established and maintained a system of quality control for their mortgage loan activities, including a written manual and checklists for employees to follow in processing loans and guarding against mortgage fraud. Quality control reports were also generated and reviewed by respondent Suliman, allowing him to monitor the activities of his employees. Mr. DiLauro testified that he was impressed by the quality control measures in place at AFFG and opined that respondent Suliman had exercised reasonable supervision over AFFG's activities.

C. Under these circumstances, it was not clearly and convincingly established that respondent Suliman failed to exercise reasonable control or supervision over respondent AFFG's licensed mortgage activities.

Other Relevant Evidence

31. According to the Bureau's Certified Statement of Audit Costs, the actual costs of the two audits described above was \$7,625.50.

32. No evidence was presented indicating respondents have any prior record of discipline by the Bureau (or Department). Respondent Suliman testified he is unaware of any complaints filed against him or AFFG, except for the aforementioned complaint by Mr. Hai and a complaint submitted to the Bureau by Mr. Hachem related to the Bell property. No evidence indicates any other seller, buyer or lender involved in the transactions reviewed by Ms. Soriano complained about respondents.

33. Respondent Suliman demonstrated no deception when dealing with Ms. Soriano during the audit. Although some of his beliefs concerning the validity of his activity were in error, it is not apparent he attempted to obfuscate or mislead Ms. Soriano. However, respondent Suliman has demonstrated no awareness that his failure to disclose Mr. Hai's true capacity to the two lenders in question or his (Suliman's) receiving and maintaining commissions from the sale of those two properties were problematic.

LEGAL CONCLUSIONS

1. *Burden of Proof.* As the party bringing administrative charges and seeking discipline against the respective licensees in this case, complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.)

2. *Standard of Proof.* In an action seeking discipline against a professional licensee, the governing agency bears the burden of establishing cause for discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; *Ettinger v. Board of Med. Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

3. *First Cause for Discipline.* Respondents' licenses are subject to discipline for failing to comply with the Real Estate Law and the Commissioner's regulations, as discovered during the audit of respondents' real estate sales and short sales files. However, of the various violations the auditor found, only the following were substantiated by clear and convincing evidence: that respondents violated section 10176, subdivision (a) [making a substantial misrepresentation], as well as sections 10176, subdivision (i), and 10177, subdivision (i) [fraud and dishonest dealing], with respect to the false statements and misrepresentations to the lenders on the Adelpia and Wyoming transactions that Mr. Hai was the real estate broker who performed that service and was entitled to the sales commissions, and by failing to disclose that Mr. Hai was respondents' employee or that respondents would receive and retain a large portion of the sales commissions. This conclusion is also based on the discussion set forth below in Legal Conclusion 5 concerning the third cause for discipline. In no other respect was the auditor's conclusions substantiated by clear and convincing evidence. (Factual Findings 5-21.)

4. *Second Cause for Discipline.* Respondents' licenses are subject to discipline for failing to comply with the Real Estate Law and the Commissioner's regulations, as discovered during the audit of respondents' mortgage loan and short sale services audit. However, of the various violations the auditor found, only some were substantiated by clear and convincing evidence. Those were the following regulatory violations of a technical nature, i.e., failure to use the Commissioner's approved MLDS form on six transactions (as opposed to two forms created by respondents which stated most of the required information) in violation of section 10240 and Regulation 2840; three MLDS forms that were not signed by the real estate broker or loan agent who negotiated the loan (or any licensed person), in violation of section 10240; and failure to state respondents' license numbers on three MLDS forms, in violation of section 10236.4, subdivision (b). In no other respect was the auditor's conclusions substantiated by clear and convincing evidence. (Factual Findings 22-30.)

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5. *Third Cause for Discipline.* A. Respondents' licenses are subject to discipline pursuant to section 10176, subdivision (b), for making false promises of a character likely to influence, persuade or induce. With regard to the Adelpia and Wyoming transactions, respondents advised the two lenders involved that Mr. Hai was the real estate broker and that commissions for such work should be paid to him. No disclosure was made to the lenders that respondent Suliman had done most of the work, Mr. Hai only filled out the forms, Mr. Hai was an employee of respondents, and for those reasons respondents would ultimately receive the commissions and believed they were entitled to keep most of them. By the terms of the short sales in question, respondents could not be the sales broker for either party. By making the false statements and misrepresentations to the lenders, respondents were able to induce the lenders into going forward with the short sale transactions, allow commission fees to be paid to Mr. Hai, and for respondents ultimately to receive the sales commissions for which they were not otherwise eligible. (Factual Findings 5-12.)

B. Respondents' licenses are also subject to discipline pursuant to section 10176, subdivision (c), for engaging in a continued and flagrant course of misrepresentations and false promises through real estate agents and salespersons. Respondents knowingly used Mr. Hai, an employee and a licensed broker, to carry out the purpose of procuring commissions for respondents, by obtaining his agreement to complete requisite forms and submit them to escrow that falsely represented him as the sole sales broker on two transactions, and by not disclosing that he was respondents' employee or that respondents would receive commissions on the transactions. (Factual Findings 5-12.)

6. *Fourth Cause for Discipline.* It was not established that respondents' licenses are subject to discipline pursuant to section 10177, subdivision (g), for negligence in the performance of their duties as brokers. No evidence established that respondents acted negligently. In most respects, respondents intended their actions and the results. Whether or not those actions violated provisions of the Real Estate Law or the Commissioner's regulations is a different matter. While respondents' violated some technical regulatory requirements in documents prepared relative to real estate transactions, it was not established that such violations constituted negligence. Neither the Accusation nor closing brief stated any particular act that should be subjected to negligence analysis. (Factual Findings 5-30.)

7. *Fifth Cause for Discipline.* It was not established that respondents' licenses are subject to discipline pursuant to the fifth cause for discipline, which alleges that respondents breached a fiduciary duty in violation of section 10177, subdivision (g). That provision provides cause for discipline based on negligence or incompetence, not breach of a fiduciary duty. In fact, sections 10176 and 10177 do not state cause for discipline based on a breach of fiduciary duty. It is not apparent that respondents' had a fiduciary duty toward the two lenders in the Adelpia and Wyoming transactions. While respondents failed to fulfill certain technical regulatory requirements in documents prepared relative to real estate transactions that their clients would have received, it is not apparent that such failures rose to the level of fiduciary failures. Finally, the Accusation does not provide any clarity of this issue, and complainant's closing brief was silent on this issue.

8. *Sixth Cause for Discipline.* It was not established that respondent Suliman's license is subject to discipline pursuant to sections 10159.2 and 10177, subdivisions (d), (h) and (g), for failure to exercise reasonable supervision and control over licensed activities of respondent AFFG and to keep respondent AFFG in compliance with the Real Estate Law. (Factual Findings 21 and 30.)

9. *Disposition.* A. It is long-settled that the purpose of proceedings of this type is to protect the public, but not to punish an errant licensee. (*Camacho v. Youde* (1979) 95 Cal.App.2d 161, 164; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786.)

B. In the practice of a real estate license, "[h]onesty and integrity are deeply and daily involved in various aspects of the practice." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176). "The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license." (*Id.* at 177-178.) In *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402, the court of appeal found that "the Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear."

C. Respondents engaged in serious misconduct when they made misrepresentations to two lenders in order to receive a significant amount of commissions they would not have been entitled to receive under the terms of the short sale transactions in question. Such activity demonstrates a lack of honesty and fair dealing, which are important virtues for a licensed broker. To a much lesser extent, the audit of respondents' business records revealed a few technical regulatory violations, perhaps showing some mild disregard for full compliance with technical documentary requirements. The most concerning issue presented is respondent Suliman's failure to comprehend that he needed to disclose to the lenders Mr. Hai's true role in the transactions and not accept any commissions on the deals. In being completely candid with the auditor during her investigation, respondent Suliman demonstrated his mindset it was perfectly appropriate to conceal his role in those transactions from the lenders and keep a significant amount of the commissions. To this day, respondent Suliman believes he did nothing wrong, which demonstrates his lack of understanding of the full contours of honest and fair dealing with all parties to a real estate transaction.

D. However, mitigating facts are present which indicate outright revocation of respondents' licenses is unwarranted and would be punitive. Respondents have long records of licensed activity without prior discipline by the Bureau. Respondents have been involved in many transactions and short sales. Yet the evidence presented, including the two audits, showed intentional misconduct only related to two transactions which were completed while respondent Suliman was occupied in Egypt dealing with a dying parent. The connection between these two facts is probably not a coincidence, suggesting that the misconduct in question was isolated and perhaps the result of a unique confluence of events not apt to be repeated. Moreover, while respondents received commissions to which they were not entitled, it is not apparent any of the involved sellers, buyers or lenders complained. While

respondent Suliman's lack of remorse about the misrepresentations to the lenders is concerning, he was not deceptive about his actions to the Bureau or during the hearing, which tends to show lack of honesty or integrity is not at the core of the problems demonstrated in this case.

E. On balance, the public can be adequately protected by restricting respondents' licenses for the two years suggested by the Bureau's model terms, under conditions including that respondents report to the Commissioner as required and respondent Suliman take and complete the professional responsibility course. (Factual Findings 1-33.)

10. *Audit Costs.* Pursuant to sections 10106 and 10148, subdivision (b), the Bureau may recover from a licensed real estate broker the costs of any audit if it is found the broker has violated section 10145 or a regulation interpreting section 10145. Section 10145 is the provision of the Real Estate Law describing how and when trust funds are to be recorded and handled by licensed brokers and salespersons. Here, it was not established respondents violated section 10145 or any regulation interpreting it. Therefore, the Bureau is not entitled to its audit costs.

ORDER

All licenses and licensing rights of respondents American Frontier Financial Group, and Suliman A. Suliman, under the Real Estate Law, are revoked; provided, however, a restricted real estate broker license shall be issued to respondents pursuant to Section 10156.5 of the Business and Professions Code if respondents make application therefor and pay to the Bureau of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to respondents 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 respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondents' conviction or plea of nolo contendere to a crime which is substantially related to respondents' fitness or capacity as real estate licensees.

2. The restricted license issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondents have 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. Respondents 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. Respondents shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondents have, 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 respondents fail to satisfy this condition, the Commissioner may order the suspension of the restricted licenses until respondents present such evidence. The Commissioner shall afford respondents the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

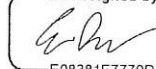
5. A. Respondents shall report in writing to the Bureau of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted licenses are in effect such information concerning respondents' activities for which a real estate license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

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

6. Respondent Suliman A. Suliman 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 Suliman fails to satisfy this condition, the Commissioner may order suspension of his license until he passes the examination.

Dated: January 22, 2016

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ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings