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JAN 05 2015

BUREAU OF REAL ESTATE

By



BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of  
  
OCTAVIO CORONA,  
  
Respondent.

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CalBRE No. H-37609 LA  
OAH No. 2014100018

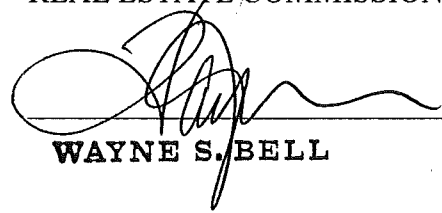
DECISION

The Proposed Decision dated November 21, 2014, 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.

This Decision shall become effective at 12 o'clock noon on ~~January~~ 26, 2015

IT IS SO ORDERED 12/30/2014

REAL ESTATE COMMISSIONER



WAYNE S. BELL

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

In the Matter of the Accusation of:

OCTAVIO CORONA,

Respondent.

Case No. H-37609 LA

OAH No. 2014100018

**PROPOSED DECISION**

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on October 23, 2014.

Cheryl Keily, Staff Counsel, represented Complainant Wayne Bell, Real Estate Commissioner of the Bureau of Real Estate (Bureau), which was known as the Department of Real Estate until July 1, 2013.

Respondent Octavio Corona represented himself.

Oral and documentary evidence was received at the hearing, and the matter was submitted October 23, 2014.

Respondent requested this hearing on Complainant's Order Suspending Real Estate License, under which his real estate broker license is suspended until he pays the costs of the two audits that resulted in disciplinary proceedings against Respondent and the two corporations for which he was the designated officer. For the reasons set out below, the order is affirmed.

**FACTUAL FINDINGS**

1. Complainant issued the Order Suspending Real Estate License, and the underlying Accusation,<sup>1</sup> solely in his official capacity.
2. Respondent has been licensed as a real estate broker since March 16, 2005. His license bears an expiration date of March 15, 2017. On September 11, 2014,

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<sup>1</sup> The Accusation, issued October 20, 2011, bore the same agency number (H-37609 LA) but a different Office of Administrative Hearings number. It named Camino Realty Inc. and Camino Realty Mortgage Services Inc. as respondents along with Octavio Corona.

Complainant suspended Respondent's license indefinitely under Business and Professions Code section 10148, subdivision (c).<sup>2</sup> Respondent timely requested a hearing.

### *Previous Accusation and Settlement*

3. On October 20, 2011, the Bureau brought an Accusation against Camino Realty Inc., Camino Realty Mortgage Inc., and Respondent individually and as designated officer for the two corporations. The Accusation alleged that between 2008 and 2010, the respondents had collected advance fees for loan solicitation and modification services without previously submitting the advance fee agreement form to the Bureau (then known as the Department of Real Estate), and compensated unlicensed persons for performing activities requiring a license. It also alleged that the respondents had violated section 10145 by mismanaging and commingling funds required to be held in trust.

4. In a Stipulation and Agreement (exhibit 4) effective September 17, 2012, the licenses of Camino Realty and Camino Realty Mortgage were revoked. The Determination of Issues section of the Stipulation and Agreement (*id.*, p. 4) found that Respondent was in violation of section 10145, and the Order (*id.*, p. 5) provided that Respondent's license would be suspended for 90 days, but that the first 30 days of the suspension would be stayed if Respondent paid a \$1,500 penalty, and the remaining 60 days of the suspension would be stayed if he obeyed all laws and regulations governing a licensee and there were no further cause for license discipline. It required that he complete a continuing education course on trust fund accounting and handling, and pay \$5,995 in restitution to persons who paid advance fees to Camino Realty.

5. Paragraph 5 of the Stipulation and Agreement (*id.*, p. 7) required that Respondent pay the \$13,217 cost of the audits that led to the disciplinary action. Unlike other parts of the Stipulation and Agreement, paragraph 5 did not specify a time for payment of the audit costs, but it did provide that Respondent pay the costs "[p]ursuant to Section 10148 of the Business and Professions Code," subdivision (c) of which provides that "the commissioner may suspend or revoke the broker's license" of the broker failed to pay for the cost of an audit within 60 days of mailing a notice of billing.

### *Events Leading to Suspension*

6. On September 18, 2012, the Bureau sent Respondent a letter demanding that he pay audit costs of \$8,460 (which, an attached invoice made clear, was for the Camino Realty audit), and another letter demanding that he pay audit costs of \$4,757 (which, an attached invoice made clear, was for the Camino Realty Mortgage audit). Other than the monetary amount, the letters were identical. They demanded that Respondent pay the total cost of each audit within 56 days from the date of the letter. Nothing in the record explains why the letters demanded payment within 56 days when section 10148 specifies 60 days, but on September 20, 2012, the Bureau sent another letter, identical to the September letters but

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<sup>2</sup> Further references to section or "§" are to the Business and Professions Code.

demanding payment of \$8,460 within 60 days instead of 56.<sup>3</sup> Respondent made no payment within 60 days of September 20, 2012.

7. On December 10, 2012, Respondent wrote to the Bureau that he believed he was unable to pay the audit costs immediately, and that he believed payment was not due for another year:

“Also as part of the agreement, I had to pay a monetary penalty of \$1,500 at the time of the agreement [and] I had one year from the time of agreement to reimburse \$6,000 plus pay the cost of the audits. It was my understanding per my conversations with your counsel, Cheryl Keily, that the cost of the audit would be due after I paid the \$6,000. Which again, would become due September 2013. At this time I am unable to pay in full the amounts due on these two invoices. I have enclosed a payment of \$50 towards each invoice as payment of good faith while can come to an agreement of payment.”

(Exhibit 5, p. 17.) He concluded by giving his phone number for further contact. The Bureau accepted the payment and reduced the amount owing for each audit by \$50.

8. The Bureau’s response to Respondent’s December 10, 2012 letter was a letter (exhibit 5, p. 19) signed, “William E. Moran, Assistant Commissioner, Enforcement, dated December 19, 2012, but stamped “received Dept. of Real Estate” on December 31, 2012. It said, “We are in receipt of your request for a payment plan regarding the balance due the Department of Real Estate for your chargeable audits.” It informed Respondent that the balance totaled \$13,117, and continued:

**This letter is to advise you that you are being granted a six month extension to pay the balance due for both invoices with FIVE monthly payments of \$2,2186.17 and ONE final payment of \$2,186.15. The first payment is due on January 19, 2013 and the final payment due on or before June 19, 2013. Please be advised that failure to comply with the prescribed payment plan could result in the suspension of your real estate license. In addition, the matter will then be referred to a collection agency which will charge a fee over and above the amount owed to the Department.**

This is the only extension we are able to authorize. In the event you are unable to comply with this payment schedule, you may wish to obtain a loan from a lending institution of your choice.

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<sup>3</sup> The Bureau apparently did not send another letter demanding \$4,757 for the Camino Realty Mortgage audit.

(Bold type and upper-case letters in original.) Moran concluded by giving a phone number where he could be reached if “you have further questions regarding this matter.” There was no evidence as to why the Bureau chose six months and \$2186.17 per month. There was also no evidence about who, or what, Moran meant by “we” when he wrote, “This is the only extension we are able to authorize.” There was no evidence that the Bureau could not have authorized a different payment plan. There was no evidence that Respondent ever contacted Moran after Moran’s letter was sent, or that he told any Bureau representative before September 2014 that he could not afford the payments proposed in Moran’s letter.

9. In March 2013, Respondent paid \$2,186.17 toward the audit costs. It was the only payment he made under the plan the Bureau imposed in December 2012.

10. The Bureau sent another two letters (one for each audit charge) on August 2, 2013 (they were dated July 19, 2013), which told Respondent that payment in full had been due on June 19, 2013. Each of the letters (exhibit 5, pp. 21-16) was sent by regular mail and certified mail to Respondent’s address of record, 2030 East Fourth Street, Suite 243F in Santa Ana. It is still his address of record, and is the address printed on the March 13, 2013 check Respondent sent to the Bureau. The previous letters to Respondent mentioned above had been sent the same way to the same address, and return receipts were signed for all of them. The letters sent August 2, 2013 came back marked “Return to sender. Not deliverable as addressed. Unable to forward.” (Exhibit 5, pp. 22 and 25.)

11. On September 11, 2014, the Bureau issued the present “Order Suspending Real Estate License.” On September 23, 2014, Respondent wrote a letter to the Bureau requesting a hearing. The letter requesting a hearing (part of exhibit 1) is not on letterhead, but has the 2030 Fourth Street address typed in the upper left corner.

12. There is no evidence of any communication from Respondent to the Bureau between March 2013 and September 2014, or from the Bureau to Respondent between August 2013 and September 11, 2014. It appears that Respondent sent his check in March 2013, and then did not contact the Bureau until it suspended his license 18 months later.

13. Respondent testified at hearing that he was unable to make monthly payments of \$2,186.17 in 2013, and is still unable to do so, but could make smaller payments. He introduced no evidence about why he did not make such payments as he could afford, as he had done in December 2012.

## LEGAL CONCLUSIONS

1. Business and Professions Code sections 10148, subdivision (b) provides that the Bureau shall charge a real estate broker for the cost of any audit, if the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145. In the Stipulation and Agreement, Respondent agreed that he had violated section 10145, and stipulated that he would pay the \$13,217 cost of the two audits “pursuant to Section 10148 of the Business and Professions Code” (Factual Finding 5) subdivision (c) of

which provides:

If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.


2. Respondent's position at hearing, in essence, was that when he told the Bureau that he was financially unable to pay the audit costs within two months, it unilaterally imposed an unrealistic payment plan with no discussion of what Respondent could actually afford. Thus the Bureau, having agreed that Respondent should be able to conduct real estate business if he paid a \$1,500 monetary penalty, then made it inevitable that his license would be suspended indefinitely; and its actions are at cross-purposes with its goal of having Respondent pay the audit costs because he cannot pay those costs if his license is suspended.

3. Respondent's position may have merit in principle, but it lacks support in fact. Respondent introduced no evidence that he asked the Bureau for a different payment arrangement, or that he ever told the Bureau what he could afford to pay toward the audit costs. He did not send any payment of any kind after March 2013 (Factual Finding 9), although the Bureau had credited his two \$50 payments in December 2012 toward the amount he owed (Factual Finding 7), and Respondent might therefore have reason to believe the Bureau would accept other partial payments. He neither attempted to pay any part of the costs, nor wrote to the Bureau about the costs, for a year and a half, until the Bureau suspended his license. Even if he believed that Moran's statement ("This is the only extension we are able to authorize") was the Bureau's final position on the subject, a reasonable person would have paid what he could to show good faith, and perhaps satisfy the Bureau and prevent a suspension. The Bureau is within its rights under section 10148 in suspending his license until he pays those costs, and Respondent has not made a showing that it should not exercise that power.

#### ORDER

The Order Suspending Real Estate License is affirmed.

DATED: November 21, 2014

  
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HOWARD POSNER  
Administrative Law Judge  
Office of Administrative Hearings