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JUN 25 2012

DEPARTMENT OF REAL ESTATE
BY: Elizabeth Valencia

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
)	No. H-37821 LA
JAMES ALFRED SANTANA,)	
)	OAH No. 2012021131
)	
Respondent.)	
_____)	

DECISION


The Proposed Decision dated May 29, 2012, 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 applications for an individual mortgage loan originator license endorsement, control person mortgage loan originator license endorsement, and company mortgage loan originator license endorsement are denied. If and when applications are again made for these licenses, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on JUL 16 2012.

IT IS SO ORDERED June 15, 2012

Real Estate Commissioner


By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Applications of:

JAMES ALFRED SANTANA,

Respondent.

Case No. H-37821 LA

OAH No. 2012021131

PROPOSED DECISION

Administrative Law Judge Deena Ghaly, Office of Administrative Hearings, State of California, heard this matter on May 4, 2012, in Los Angeles.

James A. Demus, Department of Real Estate counsel, represented Sylvia Yrigollen (Complainant), a Deputy Real Estate Commissioner of the Department of Real Estate (Department).

James Alfred Santana (Respondent) represented himself.

At the commencement of the hearing, Complainant's counsel requested that the Statement of Issues be amended by interlineation by adding "and 3" to Paragraph 5, Line 22 of the document. Respondent did not object to the request and it was granted.

The parties submitted the matter for decision on May 4, 2012.

FACTUAL FINDINGS

1. Respondent is presently licensed by the Department as a real estate broker. Respondent's license is in full force and effect and is due to expire on April 13, 2015.
2. On December 10, 2010, Respondent applied to the Department for an individual mortgage loan originator license endorsement (individual license endorsement).
3. On September 12, 2011, Respondent applied to the Department for a control person mortgage loan originator license endorsement (control person license endorsement).
4. On September 17, 2011, Respondent applied to the Department for a company mortgage loan originator license endorsement (company license endorsement) (collectively, license endorsements).
5. The applications for the license endorsements each asked substantially the same questions regarding whether the applicant had any history of criminal, civil or

regulatory actions or had any such pending actions related to providing financial services or other aspects of licensed activity, including whether the applicant was the subject of a pending regulatory action which could result in the denial, suspension or revocation of a license. On all three applications, Respondent answered "no" to these questions.

6(a). In April 2008, Robin Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner at the Department, brought two accusations against, among others, Respondent. The first, *In the Matter of the Accusation of GUERRA & LEON REALTY INC. doing business as Guerra & Associates Realty; and JAMES ALFRED SANTANA, individually and as designated officer of Guerra & Leon Realty Inc.*, Department File Number H-34870, alleged that Respondent, acting as the designated broker officer for Guerra & Leon Realty, Inc., mishandled trust funds, failed to maintain appropriate records reflecting trust funds received, employed individuals who lacked, or failed to maintain the requisite license for the work the employees performed, inappropriately entered into broker-salesperson agreements, and overall, undertook his responsibilities as Guerra & Leon Realty's designated officer in a manner which constituted negligence, failure to exercise reasonable supervision and control, and failure to keep the brokerage in compliance with applicable laws.

6(b). The second accusation, *In the Matter of the Accusation of CALIFORNIA HOME CENTER GROUP INC., and JAMES ALFRED SANTANA, individually and as designated officer of California Home Center Group Inc.*, Department File Number H-34868, alleged that Respondent, acting as the designated broker officer for California Home Center Group Inc., a licensed real estate brokerage, mishandled trust funds, failed to maintain appropriate records reflecting trust funds received, conducted licensed activities at branch offices without notifying the Department, failed to retain true and correct copies of Department approved "Mortgage Loan Disclosure Statements" for four borrowers, tapped trust funds for loan appraisal fees in amounts greater than the fees and without the knowledge of three borrowers for whom the funds were held, and, overall, undertook his responsibilities as California Home Center Group's designated officer in a manner which constituted negligence, failure to exercise reasonable supervision and control, and failure to keep the brokerage in compliance with applicable laws.

7. On February 17, 2010, Respondent, in his individual capacity and as the former designated officer of both Guerra & Leon Realty Inc., and California Home Center Group Inc., executed a Stipulation and Agreement (Stipulation) regarding all the charges set forth in both Accusations. The Stipulation was approved as to form by Respondent's then-attorney, Kelly A. Reavel. Before it would be considered final and thus resolve the outstanding disciplinary actions against Respondent, the Stipulation needed to be approved and executed by a Real Estate Commissioner at the Department.

8. Among the terms of the Stipulation are those in Paragraph 4, page 4 which reads, in part: "This Stipulation is based on the factual allegations contained in the Accusation[s]. In the interest of expedience and economy, Respondents choose not to contest these allegations, but to remain silent and understand that, as a result thereof, these

factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated herein. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.” Paragraph 6, page 4 of the Stipulation reads “It is understood by the parties that the Real Estate Commissioner may adopt this Stipulation as his Decision in this matter thereby imposing the penalty and sanction on Respondents’ real estate licenses and license rights as set forth in the “Order” herein below.”

9. Among the provisions of the Stipulation Order are those at Section II which suspends Respondent’s license, although the suspension is stayed pending completion of certain conditions including paying fines, refraining from any actions that could be the basis of additional disciplinary charges, and obeying all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California. Sections III, IV and V of the Stipulation provides that Respondent pay the reasonable costs of the audits which led to the disciplinary actions and to any subsequent audits necessary to determine whether he is in compliance with all applicable laws and regulations into the future. These sections also indicated that Respondent’s license would be suspended if he failed to make payments pursuant to the Stipulation or any subsequent agreement between him and the Department. Section VI of the Stipulation provides that Respondent’s license is “indefinitely suspended” until and unless he provides satisfactory proof of continuing education classes about trust fund accounting. Sections VII requires Respondent pass a professional responsibility exam. Section VIII imposes additional continuing education requirements on Respondent.

10. Until at least the hearing date, the Stipulation had not been approved by a Real Estate Commissioner. It was therefore pending at the times of each of Respondent’s applications for the license endorsements.

11. On January 31, 2012, Complainant, acting in her official capacity, served Respondent with a Statement of Issues denying his applications for the license endorsements. The Statement of Issues listed his failure to disclose the pending disciplinary actions against his broker’s license as the basis for the denials. Complainant served Respondent with a First Amended Statement of Issues on April 16, 2012.

12. At the hearing, Respondent testified that, although he understood that the Stipulation is not finalized until it has been approved and executed by a Real Estate Commissioner, at the times he completed the applications for the license endorsements, he believed that sufficient time had passed such that it was safe to assume the Stipulation had been ratified. Under these circumstances, he maintained, his statements on the applications denying any pending regulatory actions was accurate.

13. Respondent further testified that he did not believe he had to disclose the April 2008 disciplinary action as past regulatory discipline against his license because they had not resulted in revocation or suspension of his license. It is true that Respondent’s license history bears out his statements regarding the lack of disciplinary action against his license

but, presumably, this is only because the outstanding Stipulation, which would have imposed discipline against Respondent, is still pending with the Department. In effect, Respondent relied on a sort of limbo state following his execution of the Stipulation period. At least by his representation, the underlying disciplinary actions were no longer pending; yet, because the Department had not completed the final step of the process to ratify the agreement, all discipline flowing from the agreement was delayed therefore there was no past disciplinary action either.

14. Respondent appeared sincere and forthright in his testimony at the hearing but the inconsistency between that testimony and his answers on the applications for the endorsement licenses cannot be overlooked. If Respondent truly believed the disciplinary charges against him from the April 2008 Accusations were no longer pending, then logically, they should have been disclosed and explained as past regulatory action. Failing to disclose them whether as pending or resolved is, at best, very misleading especially given the extent of the charges and the detailed and extensive obligations arising from the Stipulation, clearly showing that Respondent had incurred extensive liability from those charges.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof is on the applicant to establish he is entitled to the license. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal. App. 4th 1205; *Southern Cal. Jockey Club v. California Horse Racing Bd.* (1950) 36 Cal. 2d 167.) The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

Applicable Statutes

2. Under Business and Professions Code sections 475, subdivision (a) and 480, subdivision (c), the Department may deny a license if the applicant knowingly fails to make a required disclosure or makes a false statement in the course of completing an application. Under Business and Professions Code section 10166.051, subdivision (b), the Real Estate Commissioner may deny a mortgage loan originator license endorsement for, among other things, “withholding information or mak[ing] a material misrepresentation in an application. Under Business and Professions Code section 10177, subdivision (a), the Department may deny a license to an applicant who “[p]roccured or attempted to procure, a real estate license ... by making a material misstatement of fact in an application for a real estate license”

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Disposition

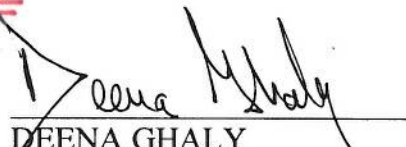
3. Cause exists to deny Respondent his applications for the license endorsements he seeks pursuant to Business & Professions Code sections 475, subdivision (a), 480, subdivision (c), and 10166.051, subdivision (b). Respondent was aware that there were disciplinary matters affecting his broker's license. By failing to acknowledge them on his application, he did not meet his obligation under these laws to provide full disclosure¹.

4. Cause does not exist to deny Respondent his applications for the license endorsements he seeks pursuant to Business And Professions Code section 10177, subdivision (a). It is unclear whether the license endorsements respondent seeks are "real estate licenses" for purposes of this provision and neither party presented evidence or argument regarding this point.

ORDER

Respondent's applications for an individual mortgage loan originator license endorsement, control person mortgage loan originator license endorsement, and company mortgage loan originator endorsement are denied.

Date: May 29, 2012


DEENA GHALY
Administrative Law Judge
Office of Administrative Hearings

¹ Although it is not the Department's conduct that is before this forum, it should be noted that its recalcitrance in acting on the outstanding Stipulation, now pending before it for over two years, has only added to the confusion and lack of transparency regarding the April 2008 charges and unnecessarily delayed Respondent's opportunity to dispose of them, whether pursuant to the terms of the Stipulation or otherwise.