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AUG 04 2014

BUREAU OF REAL ESTATE

By S. Black

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation: VERONICA MORALES, Respondent.	NO. H-2797 FR OAH No. 2014030504

DECISION

The Proposed Decision dated July 7, 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.

The Decision suspends or revokes one or more real estate licenses.

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 AUG 25 2014.

IT IS SO ORDERED 7/31/2014.

REAL ESTATE COMMISSIONER

Wayne S. Bell

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: VERONICA MORALES, Respondent.	Case No. H-2797 FR OAH No. 2014030504

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on June 5, 2014, in Oakland, California.

Real Estate Counsel Mary F. Clarke represented complainant Brenda Smith, Deputy Real Estate Commissioner, State of California.

Merrill E. Zimmershead, Attorney at Law, Gilroy Law Corporation, represented respondent Veronica Morales, who was present.

The matter was submitted on June 5, 2014.

FACTUAL FINDINGS

1. Respondent Veronica Morales is licensed or has licensing rights as a real estate salesperson under the Real Estate Law.[1] She was first licensed on February 28, 2006. Her license expired on February 27, 2014. Respondent has never been licensed as a real estate broker.

2. On December 4, 2012, complainant Brenda Smith, acting in her official capacity as a deputy real estate commissioner for the State of California, issued an accusation against respondent. The accusation alleges that respondent agreed to perform loan modification services for an individual and collected an advance fee for her services; that in doing so, she acted in the capacity of a real estate broker without being licensed so to act;

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[1] The Real Estate Law is found at Part 1 of Division 4 of the Business and Professions Code, beginning with section 10000, and includes sections 10085.6, 10130, 10131, 10176 and 10177. All statutory references are to the Business and Professions Code unless otherwise noted.

and that she made false promises in the course of performing those services. Respondent filed a notice of defense and this hearing followed.

3. In 2009 and 2010, respondent's salesperson license was activated with real estate broker William Stewart Gray. Gray does business under the name "American Heritage Group."

4. In 2009 and 2010, respondent was also the chief executive officer, the sole director, and the agent for service of process for Gelan, Inc. Gelan, Inc., is not, and was not then, licensed by the Bureau. In a "statement of information" filed with the Secretary of State on December 3, 2007, respondent identified the corporation's "type of business" as "real estate." In a statement of information filed July 13, 2010, respondent identified the corporation's type of business as "Processing."

5. Respondent conducted her real estate salesperson business, and her business with Gelan, Inc., from the same location, first from her home at 421 Recht Street in Hollister, and then from 210 San Benito Street, Suite D, in Hollister.

6. At some time shortly before December 22, 2009, Evangelina G. called respondent. She wanted to refinance her home loan, and she had heard from a friend that respondent assisted homeowners in that process. Evangelina G. made an appointment to meet with respondent in her office on December 22, 2009.

7. At the appointment on December 22, Evangelina G. told respondent that she wanted to refinance her mortgage. Respondent told her that she could assist her in filling out the documents she would need to submit, and could speak with her lender. Respondent gave Evangelina G. a preprinted form on the letterhead of American Heritage Group. The form, titled "Modification Checklist," identified various types of documents used in loan modifications. Respondent checked the boxes for "Third Party Authorization," "Modification Contract," and "Hardship letter," indicating that Evangelina G. needed to supply her with those documents, and informed Evangelina G. (in Spanish) that she also needed to submit to her two months of pay stubs; tax returns for 2007 and 2008; a copy of her homeowner's insurance with proof of payment; proof of address; and a copy of her property tax statement with proof of payment. Evangelina G. gave respondent a check for $1,100 and asked for a receipt. Respondent gave Evangelina G. a preprinted form titled "Invoice" on the letterhead of Gelan, Inc. The invoice states "1175" as the "Unit Price," but respondent crossed out "1175" and wrote in "1100" and initialed it. Respondent did not maintain a trust account, and therefore did not deposit the money into a trust account.

8. After meeting with Evangelina G. and accepting the payment of $1,100, respondent sent the Third Party Authorization (TPA) to Evangelina G.'s lender; that document authorized respondent to speak to on behalf of Evangelina G. and, without it, the lender would not discuss Evangelina G.'s loan with respondent. Respondent called the lender to make sure the lender received the TPA, and then forwarded additional documents

to the lender on respondent's behalf. From then on, respondent states, she "stayed in communication with the lender."

9. Respondent worked on Evangelina G.'s loan for about a year. Ultimately, no loan modification was achieved and the lender foreclosed on Evangelina G.'s home in or around October 2010. When the modification did not go through, respondent shredded all of the documents connected with her work for Evangelina G.

Respondent's evidence

10. Respondent acknowledges that she has helped five people, including Evangelina G., apply for loan modifications. She testified that she never represented herself as a Bureau licensee when she performed that work. At least in the case of Evangelina G., however, respondent performed the loan modification work from the same location that she performed her work as a real estate salesperson, and used the stationery of her broker in the course of performing the loan modification work.

11. Respondent never told her broker, Gray, about her loan modification work, and Gray himself was unaware of it. In or around October 2009, just after the law took effect that prohibits the collection of advance fees for loan modification services, Gray told all of his salespersons – including respondent – not to perform loan modification services. Gray felt that offering those services ultimately alienated his clients, because so few loan modifications were ever approved.

12. Respondent testified that she did not perform any loan modifications after Gray told his agents to stop performing that service. Her testimony on this point was not credible. Respondent accepted $1,100 from Evangelina G. for loan modification services in December 2009, and continued to work with her into the fall of 2010. Moreover, on July 19, 2011, Rene Esquivel, a Special Investigator for the Bureau, made a pretext call to respondent. He called respondent, identified himself under an assumed name, and told her that he was looking for an ethical and professional loan modification expert who could help him modify the loan on his property in Hollister. Respondent told Esquivel that he had contacted the right person. She told him that she could perform those services for $1,100. Esquivel asked if he would need to pay that fee in advance, and respondent told him that he would, in order to initiate the loan modification.

13. Respondent testified that Evangelina G. offered to pay $1,100 on December 22, 2009, but that she, respondent, did not demand payment in advance. Respondent, however, accepted $1,100 from Evangelina G. before she contacted Evangelina G.'s lender, and before she performed any other services in connection with the proposed loan modification.

14. When the lender foreclosed on her home, Evangelina G. demanded a refund from respondent. During an interview with Special Investigator Esquivel on March 19, 2012, respondent stated that she had made a full cash refund to Evangelina G.'s husband, but

had not obtained a receipt from him. Respondent agreed to make a second refund to Evangelina G. to demonstrate to the Bureau her willingness to make full restitution. Respondent issued Evangelina G. a check for $1,100. When Evangelina G. got the check she called Esquivel and told him that she had already received a cash refund from respondent; she asked Esquivel if she could keep the check. Esquivel told her that the "check was hers." Esquivel acknowledged at hearing that his advice to Evangelina G. was wrong and that, confronted with the same situation again, he would advise her to return the check to respondent.

15. Respondent testified that she shredded the documents connected with Evangelina G.'s file because the documents contained confidential financial information. While it may be true that the documents contained confidential information, as a real estate salesperson respondent must have known that there are other ways to protect confidential information short of destroying the documents. Respondent's testimony on this subject was not credible.

16. Respondent testified that she never advertised her loan modification services. She obtained clients by word of mouth. Respondent states that she no longer does loan modification work or real estate work.

17. The accusation alleges that respondent falsely promised Evangelina G. that she could stop the foreclosure proceeding on Evangelina G.'s home. At the conclusion of the hearing, complainant acknowledged that this allegation was not proven.

Costs

18. The Bureau has incurred costs of $5,268.07 in its investigation and enforcement of this case. That amount represents $3,325.20 in investigative costs and $1,942.87 in legal costs. These charges are supported by declarations that comply with California Code of Regulations, title 1, section 1042. In the absence of any evidence or argument to the contrary, these costs are found to be reasonable

LEGAL CONCLUSIONS

1. The expiration of respondent's license on February 27, 2014, does not deprive the Bureau of jurisdiction to proceed with disciplinary action against her license. (§ 10103.)

2. The real estate commissioner may take disciplinary action against a licensee who has "willfully disregarded the Real Estate Law . . . ." (§ 10177, subd. (d).)

3. Section 10130 provides that it is unlawful for any person to "engage in the business of, or act in the capacity of, . . . or assume to act as a real estate broker" without first obtaining a license from the real estate commissioner. A real estate broker is defined as a person who, for compensation, "negotiates loans or collects payments or performs services

for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property . . . ." (§ 10131, subd. (d).) Respondent argues that she acted only as a "scrivener" for Evangelina G. to assist her in filling out paperwork. The evidence establishes, however, that respondent performed services on behalf of Evangelina G. in connection with her mortgage: that was the purpose of securing a third party authorization from Evangelina G., so that she could communicate with the lender directly concerning Evangelina G.'s loan. In performing services for Evangelina G. in connection with her loan, respondent acted in the capacity of a real estate broker, without a license to so act. (Findings 3 through 9.) Cause for license discipline exists pursuant to section 10177, subdivision (d), as that section interacts with section 10130.

4. Section 10085.6, subdivision (a)(1), provides that

> it shall be unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower to . . . [c]laim, demand, charge, collect or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that . . . she . . . would perform.

Respondent argues that she was acting "outside the scope of her license" when she worked on Evangelina G.'s loan modification. Respondent's argument is not persuasive: she operated her loan modification business out of the same office from which she conducted her real estate business, and she used her broker's letterhead in the conduct of her loan modification business. But, in any event, section 10085.6 does not state that a violation occurs only when a licensee is acting within the scope of her license: it prohibits any licensee from performing the acts proscribed by that section. Respondent argues that she did not demand an advance payment from Evangelina G. Even if that is true, however, section 10085.6 prohibits a licensee from collecting or receiving any compensation until she has fully performed her contractual obligations. Respondent collected and received an advance fee from Evangelina G. for loan modification services, in violation of section 10086.5, by reason of the matters set forth in Findings 3 through 9, and 13. Cause for license discipline exists pursuant to section 10177, subdivision (d), as that section interacts with 10085.6.

Disciplinary considerations

5. Respondent collected an advance fee for a loan modification for a distressed homeowner in December 2009, two months after the law changed to prohibit that practice, and two months after respondent's broker told her not to perform loan modifications. It is respondent's burden to demonstrate that she is sufficiently rehabilitated from this misconduct so that she can be trusted to comply with the laws that govern real estate practice. To her credit, when Evangelina G. demanded a refund of her fees, respondent promptly issued her a full refund; respondent then issued Evangelina G. a second full refund following her

discussions with the Bureau's investigator. But, instead of providing reassurance that she is a trustworthy licensee, respondent's testimony at hearing presented additional cause for concern. Contrary to her testimony, respondent did not stop performing loan modifications, and collecting advance fees for that work, after her broker told her to stop: she collected an advance fee from Evangelina G., and she informed the Bureau's investigator that she could assist him in a loan modification for an advance fee. Respondent's testimony that she did not perform loan modifications in her capacity as a licensee reflects a poor understanding of the laws that govern her practice. More significantly, however, her testimony on that point was false, as she used her broker's letterhead in the course of providing loan modification services. It would be contrary to the public interest to allow respondent to retain her salesperson license, even on a restricted basis.

Cost recovery

6. Section 10106 provides that a licensee found to have violated the licensing laws may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Finding 18, it was established that complainant has incurred $5,268.07 in actual costs in connection with the investigation and enforcement of this matter.

7. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth certain standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

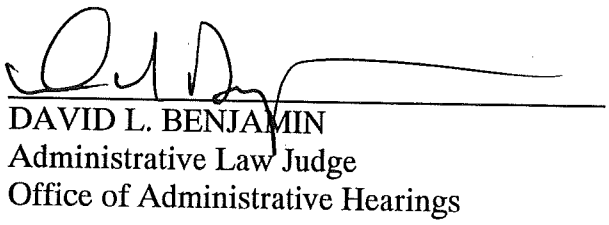
The Bureau's investigator wrongly advised Evangelina G. to keep respondent's second refund of $1,100. The Bureau's costs shall be reduced by $1,100, to $4,168.07, and reduced further by $417, approximately 10 percent, because the charge of making false promises was not established. The Bureau's permitted cost recovery is $3,751.07.

ORDER

1. All licenses and licensing rights of respondent Veronica Morales under the Real Estate Law are revoked.

2. Respondent Veronica Morales shall pay the Bureau its costs of investigation and enforcement in the total amount of $3,751.07.

DATED: July 7, 2014



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE
By B. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of VERONICA MORALES, Respondent.	NO. H-2797 FR ACCUSATION

The Complainant, BRENDA SMITH, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity against VERONICA MORALES dba Gelan, Inc. (herein "Respondent"), and is informed and alleges as follows:

1

At all times mentioned herein, Respondent was and now is licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

2

At all times mentioned herein, Respondent was and now is licensed by the Department of Real Estate (herein the "Department") as a real estate salesperson.

3

At all times mentioned herein, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California

within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent solicited lenders or borrowers for or negotiated loans, including loan modifications, or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

4

Between about December 22, 2009 and November 12, 2010, Respondent, doing business as Gelan, Inc., without the knowledge of her employing broker, solicited Evangelina G. (herein "Evangelina") to provide loan modification services in order to save Evangelina's residence, located on Beth Street, Hollister, California, from foreclosure; promised to stop foreclosure proceedings; collected and kept an advance fee for said services in the amount of about $1,100.00, when in fact, Respondent failed to obtain a loan modification and Evangelina's home was foreclosed on about November 8, 2010, violations of Sections 10130 (license requirement), 10085.6 (collecting advance fees) and 10176(b) (false promises) of the Code.

5

The facts alleged above are grounds for the suspension or revocation of the license and license rights of Respondent under Sections 10130, 10085.6 and 10176(b) of the Code in conjunction with Section 10177(d) of the Code.

COST RECOVERY

6

Investigation and Enforcement Costs

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request the Administrative Law Judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of the investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other applicable provisions of law.

BRENDA SMITH
Deputy Real Estate Commissioner

Dated at Fresno, California
this 4 day of December 2012