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JUN 1 1 2012

DEPARTMENT OF REAL ESTATE
By K. Mar

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	NO. H-11203 SF
KELLY JOHNSON,	)	
	)	OAH NO. 2011100022
Respondent.	)	
	)	

DECISION

The Proposed Decision dated May 11, 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 Decision suspends or revokes the real estate license and/or license rights.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension 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 JUL - 2 2012.

IT IS SO ORDERED 6/6/2012.

REAL ESTATE COMMISSIONER

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:	
KELLY JOHNSON,	Case No. H -11203 SF
Respondent.	OAH No. 2011100022

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on May 9, 2012, in Oakland, California.

John W. Barron, Counsel, represented complainant E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California.

Kelly Johnson represented herself and was present throughout the administrative hearing.

FACTUAL FINDINGS

1. E. J. Haberer II made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Kelly Johnson (respondent) has been licensed by the Department of Real Estate (Department) as a real estate salesperson since June 28, 2006. On October 11, 2011, respondent received a Desist and Refrain Order on her real estate salesperson license, number S/01758171. The license is scheduled to expire on August 1, 2014. Respondent has never been licensed as a real estate broker.

3. On August 7, 2009, respondent met with Pedro Jimenez Gomez at his home in Richmond, California. Foreclosure proceedings had been initiated on the Gomez's home. Respondent was referred to Gomez by a neighbor who was also facing foreclosure. Respondent gave Gomez a business card stating that she was a realtor employed by Century 21 Pinnacle.

4. On December 22, 2008, Pinnacle Homes & Estates, Inc., which does business as Century 21 Pinnacle, had advised the Department in writing that it was no longer employing respondent. The Department sent respondent a letter on December 23, 2008,

advising her of the change effective December 22, 2008, and that she could not engage in further licensed activities until her license was affiliated with a licensed broker. On June 8, 2010, the Department was advised that respondent's license was activated in the employment of Brian Y. Atizado, of Pinole, California. That employment was discontinued on June 27, 2010, and the Department has not been notified of an employing broker affiliation since that time.

5. On August 7, 2009, when respondent met with Gomez, she advised him that she was going to help him refinance his home loan. Respondent assisted him in filling out paperwork; she and Gomez later took the paperwork to the Century 21 Pinnacle office, where respondent made copies of the documents. The letterhead on the paperwork was in the name of "propertyRELIEF!", with an address in South San Francisco, California.

Respondent identified herself as the propertyRELIEF! consultant on the documents, and Gomez as the client. Respondent indicated on the forms that she had received $3,500 from Gomez. The "Consulting and Processing Fee Agreement" states that the consultant would receive a fee as compensation for consulting with him on his mortgage loan.

6. Respondent collected a check in the amount of $3,500 from Gomez as a fee for working on the refinance. The check was made out to PropertyRelief. In November 2009, Gomez filed a complaint with the Department concerning respondent's actions.

Respondent's Evidence

7. Respondent denies working as a consultant for PropertyRELIEF!. Respondent concedes that she referred approximately 20 individuals to PropertyRELIEF! and that she helped approximately five of those individuals fill out the paperwork. Respondent states that she provided this assistance as a courtesy and did not receive or expect any compensation. Respondent's testimony on this point was not credible.

8. Respondent does not know if PropertyRELIEF! was licensed by the Department to conduct real estate transactions, or whether the forms she helped people fill out and submit to PropertyRELIEF! had been approved by the Department. PropertyRELIEF! representatives were introduced to her by a friend. Respondent later learned that PropertyRELIEF! was a "scam" operation and that the owner of the business, Cynthia Corn, is in jail. Respondent is aware that some of the people she referred to PropertyRELIEF! were the victims of the fraud.

9. Respondent denied any responsibility for her misconduct. She has not contacted any of the individuals she referred to PropertyRELIEF! after learning that the company had swindled them. No evidence of rehabilitation was established.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10130,[1] it is unlawful to engage in the business of, or act in the capacity of, a real estate broker without first obtaining a broker's license from the Department. Section 10131, subdivision (d), defines a real estate broker as a person who, for compensation or in expectation of compensation, solicits borrowers or negotiates to perform services for borrowers in connection with loans secured directly or collaterally by liens on real property. Respondent, who has never been licensed as a real estate broker, signed an agreement in which she identified herself as a PropertyRELIEF! consultant, and which indicated that she would receive a fee for loan modification services. (Factual Findings 3 through 8.) Cause for discipline therefore exists against respondent's license pursuant to sections 10130 and 10177, subdivision (d).[2]

2. Pursuant to sections 10085 and 10085.5, and California Code of Regulations, title 10, section 2970, licensees may not collect an advance fee unless they submit materials to be used in soliciting and negotiating such an agreement to the commissioner for approval beforehand.

The term "advance fee" as defined in Business and Professions Code section 10026, includes a fee demanded, charged, received, or collected for soliciting borrowers to negotiate loans on real estate.

Pursuant to section 10131.2, only licensed brokers are permitted to solicit and collect advance fees. Based on the matters set forth in Factual Findings 2 through 8, cause for discipline against respondent's license exists under sections 10131.2, 10085, 10085.5 and California Code of Regulations, title 10, section 2970, in conjunction with section 10177, subdivision (d).

3. Section 10137 prohibits a licensed real estate salesperson from accepting compensation from someone other than their employing broker. Based upon the PropertyRELIEF! contract signed by respondent, the Department established that respondent expected compensation for her efforts. The Department did not establish that respondent received compensation, and therefore cause does not exist for discipline pursuant to section 10137.

4. Pursuant to section 10177, subdivision (j), a licensee subjects his or her license to discipline as a result of engaging in conduct which constitutes fraud or dishonest dealing. As set forth in Factual Findings 3 through 6, respondent represented that she was employed by Century 21 Pinnacle long after her employment with the company had been

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[1] All further statutory references are to the Business and Professions Code.

[2] Section 10177, subdivision (d) provides that the commissioner may discipline a license where the licensee willfully disregards or violates the Real Estate Law. The Real Estate Law commences at section 10000.

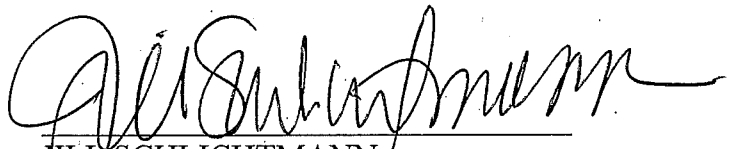
terminated, and she collected advance fees without authority to do so. This conduct constitutes fraud or dishonest dealing and is cause for discipline pursuant to section 10177, subdivision (j).

5. In determining the appropriate discipline, the central question is whether respondent is substantially rehabilitated following her misconduct. Respondent bears the burden of demonstrating her rehabilitation. The criteria used by the Department in evaluating a licensee's rehabilitation are set forth in California Code of Regulations, title 10, section 2912. The paramount concern is whether the licensee is rehabilitated to the extent that she can be trusted to discharge her duties as a real estate salesperson in a manner consistent with public safety. Respondent has failed to accept responsibility for her actions or establish evidence of rehabilitation. (Factual Finding 9.) At this time, the protection of the pubic compels the revocation of respondent's license.

ORDER

All licenses and licensing rights of respondent Kelly Johnson under the Real Estate Law are revoked.

DATED: 5/11/12



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

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FILED

AUG 24 2011

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of KELLY JOHNSON, Respondent.	No. H-11203 SF ACCUSATION

The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against KELLY JOHNSON ("Respondent") is informed and alleges as follows:

1

The Complainant makes this Accusation in his official capacity.

2

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code ("the Code") as a real estate salesperson. At no time mentioned, was Respondent licensed by the Department of Real Estate as a real estate broker.

3

At all times mentioned, Respondent performed services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected an advance fee for any of the services offered.

4

On or about August 7, 2009, Respondent solicited and collected an advance in the amount of $3,500 from Jimenez Gomez ("Gomez") and Maria Gomez Preciado ("Preciado") for loan modification services related to real property located at 1629 Dunn Avenue, Richmond, California. Respondent never obtained a loan modification for and has never refunded the advance fees paid by Gomez and Preciado.

5

In conjunction with the solicitation of an advance fee from Gomez and Preciado, Respondent represented that she was a "Realtor" employed by Century 21 Pinnacle. In fact, Respondent's employment had been terminated by Century 21 Pinnacle on or about December 22, 2008.

6

By the commission of the acts alleged in Paragraphs 4 and 5, above, Respondent engaged in the business and acted in the capacity of a real estate broker within the State of California as defined by Sections 10130 (broker license requirement) and 10131(d) (performing services for borrowers and/or lenders in connection with loans secured by real property) of the Code. Such acts and/or omissions are grounds for the suspension or revocation of the license and license rights of Respondent under Sections 10085 (prior approval of advance fee

agreement materials), 10085.5 (collection of advance fee by someone other than real estate broker), 10130, 10131(d), 10131.2 (collection of advance fees), 10137 (acceptance of compensation from someone other than employing broker), 10177(j) (other conduct which constitutes fraud or dishonest dealing) of the Code, and Section 2970 (submission of advance fee materials) and 2972 (content of verified accounting) of Title 10, Chapter 6, California Code of Regulations.

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 Code, and for such other and further relief as may be proper under the provisions of law.

E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 5 day of August, 2011.