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NOV 15 2011

DEPARTMENT OF REAL ESTATE
BY: [illegible]

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	
	)	NO. H-36288 LA
SAVING THE AMERICAN DREAM, INC.,	)	
and ROBERT ANTHONY MURATALLA,	)	L-2010060118
	)	
Respondents.	)	
	)	

DECISION

The Proposed Decision dated October 7, 2011, 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 DEC - 5 2011.

IT IS SO ORDERED 11-10-11.

BARBARA J. BIGBY
Acting Real Estate Commissioner

[illegible]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. H-36288 LA
SAVING THE AMERICAN DREAM, INC.,[1] and ROBERT ANTHONY MURATALLA,	OAH No. 2010060118
Respondents.	

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter on September 14, 2011, at Los Angeles, California.

James R. Peel, Staff Counsel, represented Complainant.

Robert Anthony Muratalla (Respondent) represented himself.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. Robin L. Trujillo made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent was licensed by the Department of Real Estate (Department) as a real estate salesperson on April 12, 1993 (license number S/01157842). The license expired on July 14, 2009.[2] At all times relevant to these proceedings, Respondent's employing broker was Delta Pacific Lending, Inc. (Delta). Saving the American Dream, Inc. (STAD) was first licensed by the Department as a real estate broker on September 2, 2008.

3. On a date not established by the evidence, but prior to May 10, 2008, Respondent was employed by STAD to sign up clients for its mortgage "re-negotiation"

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[1] The Accusation has been resolved as to this Respondent.

[2] Notwithstanding the expiration or lapsing of a license by operation of law or by order or decision by the department or a court of law, the department retains jurisdiction to institute disciplinary proceedings against such licensee, or to render a decision suspending or revoking such license. (Bus. & Prof. Code, § 10103.)

business. According to the contract STAD had its clients sign, STAD would "assist the client in attempting to negotiate his existing mortgage." The contract specifically provided, "The objectives of this Agreement include negotiating the Client's existing loan to a level the Client can afford, or rescinding the Client's loan returning money back to the Client or negotiating a short sale." STAD paid Respondent $150 for each client he signed up. In addition, the client directly paid Respondent a $50 notary public fee for notarizing a Limited Power of Attorney granting STAD (or its predecessor Advocate for Fair Lending, LLC (AFL) the right to negotiate directly with the lender.

4. On May 10, 2008, Respondent met with homeowners Douglas and Sue Schindler. The Schindler's had an existing mortgage with a monthly payment of approximately $2,100. However, their mortgage interest was due to increase and their monthly payment was about to rise to $3,700. The Schindler's were interested in keeping their monthly payments to approximately $2,000.

5. Respondent explained the steps STAD would take in attempting to negotiate with the Schindler's lender. Respondent told them STAD "would take things as far as necessary," including taking the lender to court, in order to negotiate better mortgage terms. At no time did Respondent himself negotiate for or on behalf of the Schindler's, nor did he tell them that he would do so. Nor did Respondent quote any mortgage rates. Although Respondent informed the Schindler's that he worked for STAD, he gave them a business card showing that he was a sales manager at Delta (which had nothing whatsoever to do with this transaction.) Respondent testified that he had no other business card to hand out, as STAD would not give him cards until he had been employed by them for at least 90 days.

6. The Schindler's signed the Agreement described in Finding 3 (Exhibit 7) and the Limited Power of Attorney, which Respondent notarized. Exhibit 7 named AFL as the "Company." The Schindler's agreed to pay $1,925 per month for six months of services and gave Respondent a check for $1,925, payable to AFL as and for the first payment. STAD agreed to refund these payments if it failed to "obtain any concession or benefit to the Client." Respondent told the Schindler's their payments "were to be placed in a special trust account" so that STAD could demonstrate to the lender the Schindler's "good faith" by showing the lender money was available to pay the re-negotiated loan. The Agreement does not specify that the Schindler's funds were to be held in trust and those funds were not, in fact, held in trust.

7. On May 17, 2008, Respondent again met with the Schindler's and had them sign a new Agreement (Exhibit 9), which changed the name of the company to STAD but was otherwise identical to Exhibit 7. Respondent returned the first check and the Schindler's issued a new check for $1,925 payable to STAD. The evidence did not disclose whether the Schindler's executed a new Limited Power of Attorney in favor of STAD. Respondent turned the check and the new Agreement over to STAD.

8. At the time Respondent met with the Schindler's, he believed STAD was a licensed real estate broker. However, as noted in Finding 2, STAD did not become licensed

until September 2, 2008. Respondent also believed he did not need a salesperson's license to sign up clients for STAD because he himself was not going to negotiate on the Schindler's behalf, nor did he tell the Schindler's that he could arrange for a new loan or quote them any interest rates. Respondent's sole compensation for having the Schindler's sign the Agreement was $150 from STAD and the $50 notary fee.

9. Other than attempting to find out from STAD what progress it was making on the Schindler's re-negotiation, Respondent had no further connection with the Schindler transaction. The Schindler's did, in fact, pay STAD six monthly payments of $1,925. STAD never accomplished anything on their behalf, nor did it refund the entirety of the Schindler's payments, as it was required to under the terms of the Agreement. STAD did refund one payment to the Schindler's. According to counsel for Complainant, the Department has revoked STAD's broker's license.

10. Respondent's notary commission has expired. He is now licensed by the Department of Motor Vehicles as a salesperson. He works for a company that sells recreational vehicles. He is married and helps his wife with her administrative duties for their Homeowner's Association.

* * * * *

CONCLUSIONS OF LAW

1. Complainant alleges Respondent's conduct, as set forth in Findings 3 through 9, required him to have a real estate broker's license under the provisions of Business and Professions Code sections 10130 and 10131, subdivisions (d) and (e), which read as follows:

> § 10130. It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department. The commissioner may prefer a complaint for violation of this section before any court of competent jurisdiction, and the commissioner and his counsel, deputies or assistants may assist in presenting the law or facts at the trial. It is the duty of the district attorney of each county in this state to prosecute all violations of this section in their respective counties in which the violations occur.
>
> § 10131. A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:
>
> (d) Solicits borrowers or lenders for or 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 or on a business opportunity.

(e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

2. Respondent violated the provisions of Business and Professions Code sections 10130 and 10131, subdivision (d), in that he acted as a real estate broker when he "performed a service" for the Schindler's in connection with a note secured by real property by having them sign an agreement for STAD to re-negotiate their mortgage loan.

3. Respondent did not violate the provisions of Business and Professions Code section 10131, subdivision (e) by reason of Findings 3 through 9.

4. Complainant alleges Respondent violated the provisions of Business and Professions Code section 10145, subdivision (c), which provides:

(c) A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

5. Although Respondent did accept $1,925 from the Schindler's, whom he told would be placed in trust, he did not accept those funds "on behalf of the broker under whom he . . . was licensed." At the time he received the funds, Respondent was licensed under Delta (Findings 2 and 5.) The check he received was payable to STAD, not Delta. Accordingly, his conduct did not violate the provisions of Business and Professions Code section 10145, subdivision (c).

6. Complainant alleges that, by reason of Respondent having violated the Real Estate Law, cause for discipline against Respondent's real estate salesperson's license exists under the provisions of Business and Professions Code section 10177, subdivisions (d), (f) and (j), which provide:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

7. Respondent's real estate salesperson's license is subject to discipline under the foregoing subdivisions of Business and Professions Code section 10177, by reason of Findings 2 through 9, and Conclusions of Law 1 and 2 when he acted as a real estate broker without being so licensed and when he told the Schindler's their money would be placed in trust when he knew or should have they would not be placed in trust.

8. Respondent argued he did not know his conduct violated the Real Estate Law. The courts have long held that "ignorance of the law is no excuse." This doctrine was best explained in *Hale v. Morgan* (1978) 22 Cal.3d 388 at page 396:

> Speaking many years ago within a criminal context, we amplified the principle in this way: "It is an emphatic postulate of both civil and penal law that ignorance of a law is no excuse for a violation thereof. Of course it is based on a fiction, because no man can know all the law, but it is a maxim which the law itself does not permit any one to gainsay. . . . The rule rests on public necessity; the welfare of society and the safety of the state depend upon its enforcement. . . . [If permitted] the plea [of ignorance] would be universally made, and would lead to interminable questions incapable of solution. Was the defendant in fact ignorant of the law? Was his ignorance of the law excusable? The denser the ignorance the greater would be the exemption from liability. The absurdity of such a condition of the law is shown in the consummate satire of Pascal, where, speaking upon this subject, he says, in substance, that

although the less a man thinks of the moral law the more culpable he is, yet under municipal law 'the more he relieves himself from a knowledge of his duty, the more approvedly is his duty performed.'" (Citing, *People v. O'Brien* (1892) 96 Cal.171 at p. 176.)

* * * * *

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Real estate salesperson's license number S/01157842 and all licensing rights appurtenant thereto, issued to Robert Anthony Muratalla, are revoked.

Date: 10-7-11

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

FILED
AUG 10 2010
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of SAVING THE AMERICAN DREAM, INC., and ROBERT ANTHONY MURATALLA, Respondents.	NO. H-36288 LA

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on July 1, 2010, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

I

On September 14, 2009, Robin L. Trujillo made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to Respondents' last known mailing address on file with the Department on September 30, 2009.

On July 1, 2010, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent SAVING THE AMERICAN DREAM, INC.'s (STAD) default was entered herein.

II

STAD (hereinafter referred to as 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 (hereinafter Code).

III

Respondent STAD was licensed by the Department of Real Estate of the State of California as a real estate broker on or about September 2, 2008. From on or about November 12, 2008 to present Respondent has not been associated with a designated broker officer.

IV

During the three year period preceding the filing of the Accusation Respondent STAD engaged in activities requiring a real estate broker license as defined by Code Section 10131(d) including soliciting borrowers and lenders and negotiating loans and loan modifications on real property.

V

While engaging in the activities mentioned in Paragraph IV above Respondent STAD acted prior to being licensed or without a designated broker officer in violation of Code Section 10211.

DETERMINATION OF ISSUES

I

Cause for disciplinary action against Respondent SAVING THE AMERICAN DREAM, INC. exists pursuant to Business and Professions Code Sections 10177(f) and 10177(j), and Business and Professions Code Section 10177(d) for violation of Business and Professions Code Sections 10130 and 10211.

II

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

The license and license rights of Respondent SAVING THE AMERICAN DREAM, INC. under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on AUG 30 2010

DATED: 7/22/2010

JEFF DAVI
Real Estate Commissioner

JAMES R. PEEL, Counsel (SBN 47055)
Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982
-or- (213) 576-6913 (Direct)

FILED
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DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of SAVING THE AMERICAN DREAM, INC. and ROBERT ANTHONY MURATALLA, Respondents.	No. H-36288 LA A C C U S A T I O N

The Complainant, Robin L. Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against SAVING THE AMERICAN DREAM, INC. and ROBERT ANTHONY MURATALLA, alleges as follows:

1. The Complainant, Robin L. Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against SAVING THE AMERICAN DREAM, INC. and ROBERT ANTHONY MURATALLA.

2. SAVING THE AMERICAN DREAM, INC. and ROBERT ANTHONY MURATALLA (hereinafter referred to as "Respondents") are presently licensed and/or have license rights under the Real

Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter Code).

3. Respondent SAVING THE AMERICAN DREAM, INC. was licensed by the Department of Real Estate of the State of California as a real estate broker on or about September 2, 2008. From on or about November 12, 2008 to present Respondent has not been associated with a designated broker officer.

4. At all times herein mentioned, Respondent ROBERT ANTHONY MURATELLA was licensed by the Department of Real Estate of the State of California as a real estate salesperson employed by real estate broker Delta Pacific Lending, Inc.

5. During the three year period preceding the filing of this Accusation Respondent SAVING THE AMERICAN DREAM, INC. engaged in activities requiring a real estate broker license as defined by Code Section 10131(d) including soliciting borrowers and lenders and negotiating loans and loan modifications on real property.

6. While engaging in the activities mentioned in Paragraph 5 above Respondent corporation acted prior to being licensed or without a designated broker officer in violation of Code Section 10211.

7. On or about May 10, 2008, for or in expectation of compensation, Respondent MURATALLA solicited and negotiated a re-finance loan on real property located at 3567 Lehigh Circle, Corona, California, for borrowers Douglas and Susan Schindler on behalf of Respondent corporation.

8. Respondent MURATALLA violated Code Section 10145(c) by collecting advance fees from the borrower and failing to turn the funds over to his employing broker.

9. Respondent MURATALLA's activities are acts requiring a real estate broker license under the provisions of Code Section 10131(d) and (e).

10. The conduct of Respondent SAVING THE AMERICAN DREAM, INC., as alleged above, subjects its real estate license and license rights to suspension or revocation pursuant to Sections 10177(f) and 10177(j) of the Code, and Section 10177(d) for violation of Code Sections 10130, and 10211.

11. The conduct of Respondent ROBERT ANTHONY MURATALLA, as alleged above, subjects his real estate license to suspension or revocation pursuant to Sections 10177(f) and 10177(j) of the Code, and Section 10177(d) for violation of Code Sections 10130 and 10145(c).

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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 Respondents SAVING THE AMERICAN DREAM, INC. and ROBERT ANTHONY MURATALLA under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 14 day of September, 2009.

ROBIN L. TRUJILLO
Deputy Real Estate Commissioner

cc: Saving The American Dream, Inc.
Robert Anthony Muratalla
Phillip Ihde
Robin L. Trujillo
Sacto.