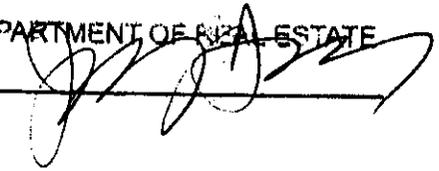


12/10/11

FILED

NOV 10 2011

DEPARTMENT OF REAL ESTATE
BY: 

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation Against)	No. H-36501 LA
)	L-2010041014
JOHN PAUL ROCK,)	
)	
Respondent.)	
_____)	

DECISION AFTER REJECTION

Elwood B. Hain, Jr., Administrative Law Judge pro tem ("ALJ") Office of Administrative Hearings, State of California, heard this matter on April 12, 2011 in Los Angeles.

Julie To, Counsel, represented Robin Trujillo, Deputy Real Estate Commissioner ("Complainant"), California Department of Real Estate ("Department").

JOHN PAUL ROCK ("Respondent") was present at hearing and represented himself.

Oral and documentary evidence was received and the matter was submitted for decision on April 12, 2011. On May 25, 2011, the ALJ submitted a Proposed Decision which I declined to adopt as my Decision herein.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of

1 the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would
2 decide the case upon the record, the transcript of proceedings held on April 12, 2011, and upon
3 any written argument offered by Respondent and Complainant. Respondent and Complainant
4 each submitted further arguments.

5 I have given careful consideration to the record in this case, including the
6 transcript of proceedings of April 12, 2011. I have also considered the arguments submitted by
7 Respondent and by Complainant. The following shall constitute the Decision of the Real Estate
8 Commissioner ("Commissioner") in this proceeding:

9 FINDINGS OF FACT

10 *Parties and Jurisdiction*

11 1. Complainant filed the Accusation in this proceeding in her official capacity.

12 2. Respondent is licensed by the Department, under the Real Estate Law, Part 1
13 of Division 4 of the California Business and Professions Code ("Code") as a real estate broker.
14 Respondent was first licensed as a broker on March 4, 1997, and was licensed by the Department
15 as a salesperson prior to that time.

16 3. Respondent was a principal owner and President of Greater Acceptance
17 Mortgage Corp. ("GAMC"), a consumer lending corporation with offices located in Orange
18 County, California. GAMC was licensed by the Department as a corporate real estate broker in
19 California. Beginning on or before August 1, 1997 and continuing through July 31, 2005,
20 Respondent was the broker-officer for GAMC designated pursuant to Code Section 10159.2 to
21 be responsible for supervising the salespersons and activities of the corporation to ensure
22 compliance with the Real Estate Law.

23 4. Beginning on April 9, 2002, GAMC was licensed by the State of Washington
24 Department of Financial Institutions ("DFI") as a Consumer Loan Company. GAMC's business
25 address for its DFI license was located at 940 Town and Country Road, Orange, California
26 92868. As discussed further below, GAMC surrendered its license in Washington on October 3,
27 2005.

1 5. On August 9, 2009, the Washington State DFI, issued a consent order that
2 prohibited Respondent, GAMC and Michael E. Smith, another principal owner of GAMC, from
3 participating in the conduct of the affairs of any consumer lender licensed by the DFI, or any
4 person subject to licensure or regulation by the DFI for 30 years from the date of entry of the
5 Consent Order, in any capacity, including but not limited to: (1) any financial capacity whether
6 active or passive, or (2) as an officer, director, principal, designated broker, employee or loan
7 originator or (3) any management, control, oversight or maintenance of any trust account(s) in
8 any way related to any residential mortgage transaction or (4) receiving, disbursing, managing,
9 controlling in any way, consumer trust funds in any way related to any residential mortgage
10 transaction. In addition,

11 6. The facts and circumstances leading to the order against Respondent stem from
12 Respondent's ownership and management as principal owner and President of GAMC and
13 GAMC's lending practices in making consumer loans secured by second mortgages on property
14 in Washington State between April 9, 2002 and May 20, 2005. GAMC's registered place of
15 business under its Washington State consumer lender license was in Orange, California. In May
16 of 2005, the Washington State DFI conducted an on-site examination of GAMC's books and
17 records at its offices in Orange, California. The examination revealed several violations of
18 Washington State law, based on factual findings set forth in the Statement of Charges. Grounds
19 for Entry of the Order, set forth in the Statement of Charges included the following violations,
20 which, if committed by a California real estate licensee, would be grounds to revoke or suspend a
21 broker license:

22 a. Disclosures: failure to provide Good Faith Estimates ("GFES") and Truth-in-
23 Lending disclosures within three days of receiving a loan application, failing to disclose the
24 APR, and failing to disclose prepayment penalties, in violation of the Revenue Code of
25 Washington (RCW), sections 31.04.027(6) and 31.04.102(2) and (3).

26 b. Fees: Charging an excessive junior lien loan origination fee, in violation of
27 RCW section 31.04.105(2).

1 c. Deceptive and Unfair Practices: directly or indirectly engaging in an unfair or
2 deceptive practice toward any person, in violation of RCW section 31.04.027(2).

3 d. Fraudulent Activity: Directly or indirectly employing any scheme or device, or
4 artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or
5 mislead any person, in violation of RCW 31.04.027(1).

6 e. Requirement to Obtain License: Maintaining an unlicensed place of business,
7 in violation of RCW 31.04.075.

8 f. Requirement to Comply with Investigations: Negligently making a false
9 statement to the DFI in connection with an investigation the DFI was conducting, in violation of
10 RCW Section 31.04.027(8).

11 7. Each of the violations of Washington State Law set forth in Paragraph 6 above
12 would also be grounds to discipline a real estate licensee pursuant to California Business and
13 Professions Code sections 10240, 10241, 10162, 10177(d), 10176(i), 10177(g) and /or 10177(j).

14 8. After the examination in 2005 by the DFI, Respondent, his business partner
15 and the corporation he co-owned, were ordered to make restitution, pay fines, and provide proof
16 of correction of the violations. They did not do so, and the DFI made a claim on the
17 corporation's surety bond. As of the time of entry of the Consent Order, Respondent, the
18 corporation and his co-owner were ordered to pay restitution of remaining claims, which
19 amounted to \$1,914.74 in refunds to borrowers and a \$2,085.26 in investigation fees. Respondent
20 testified that the restitution and investigative fees were paid.

21 9. Respondent testified at hearing that he managed the GAMC loan officers and
22 sales force, which numbered from 24 to 40 persons. He testified that he coached the loan
23 officers and spoke to clients, but could not recall meeting any clients. According to Respondent,
24 the other principal owner, Michael E. Smith, managed the loan processing and funding and
25 oversaw the compliance issues and pricing of origination fees.

26 10. At hearing, Respondent provided a resolution from of the Directors of
27 GAMC reflecting intention of the Directors to obtain a California Residential Mortgage license

1 *agency or entity was taken only after giving the licensee or*
2 *applicant fair notice of the charges, an opportunity for a hearing,*
3 *and other due process protections comparable to the Administrative*
4 *Procedure Act...and only upon an express finding of a violation of*
5 *law by the agency or entity."*

6 2. The grounds for disciplinary action barring Respondent from engaging in
7 lending activities in the State of Washington, as set forth more fully in Finding of Fact No. 6
8 above, would be grounds for the suspension or revocation of a California real estate license.
9 Specific violations of the Revised Code of Washington cited as basis for the Consent Order
10 parallel violations of the California Business and Professions Code ("Code") and related
11 regulations of the Commissioner set forth in Title 10, Chapter 6 of the California Code of
12 Regulations ("Regulations"), as follows:

13 a. Disclosures: failure to provide Good Faith Estimates ("GFEs") and Truth-in-
14 Lending disclosures within three days of receiving a loan application, failing to disclose the
15 APR, and failing to disclose prepayment penalties, in violation of the Revised Code of
16 Washington (RCW), sections 31.04.027(6) and 31.04.102(2) and (3) would also be a violation
17 of Code Sections 10240, 10176(i) and/or 10177(g).

18 b. Fees: Charging an excessive junior lien loan origination fee, in violation of
19 RCW section 31.04.105(2) would be a violation of Regulation 2843 and grounds for discipline
20 pursuant to Code Section 10177(d).

21 c. Deceptive and Unfair Practices: directly or indirectly engaging in an unfair or
22 deceptive practice toward any person, in violation of RCW section 31.04.027(2) would be a
23 violation of Code Section 10176(i) and/or 10177(j).

24 d. Fraudulent Activity: Directly or indirectly employing any scheme or device, or
25 artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or
26 mislead any person, in violation of RCW 31.04.027(1).

27 e. Requirement to Obtain License: Maintaining an unlicensed place of business,
in violation of RCW 31.04.075 would be a violation of Code Section 10162.

1 f. Requirement to Comply with Investigations: Negligently making a false
2 statement to the DFI in connection with an investigation the DFI was conducting, in violation of
3 RCW Section 31.04.027(8) would be a violation of Code Section 10177(g) and/or 10176(i).

4 3. The ALJ opined that the Accusation did not expressly allege and,
5 "Complainant did not prove, that Respondent's actions amounted to a violation of California
6 law." The ALJ further found that the Washington State Consent Order did not include any
7 conclusion that Respondent or others violated any law. However, the Consent Order internally
8 refers to the Statement of Charges which sets for the Grounds for Entry of Order. Respondent
9 was afforded due process rights to a fair hearing and in fact availed himself of those rights prior
10 to the imposition of discipline. As part of the Consent Order, Respondent agreed not to contest
11 the Statement of Charges.

12 4. Therefore, cause exists to suspend or revoke Respondent's real estate broker
13 license pursuant to Business and Professions Code section 10177, subdivision (f) due to the
14 disciplinary action taken against his license rights by the State of Washington.

15 *Aggravation/Mitigation*

16 5. Two years have passed since the entry of the Consent Order barring
17 Respondent from participating in any capacity in the consumer lender industry in Washington
18 State. Respondent testified that restitution and an investigative fee have been paid. Respondent
19 has not had the discipline reduced, and there is no indication that he would be able to have his
20 consumer lender license in Washington State reinstated. Respondent was conducting business in
21 an unlicensed office in Orange County, California at the time of the events leading to discipline
22 by Washington State. Other than self-serving testimony that compliance oversight was the
23 responsibility of his business partner, Respondent did not offer any explanation of why federally
24 mandated disclosures were not made in transactions conducted by a salesperson otherwise under
25 his supervision. He did not offer any suggestions, much less concrete steps taken as to how he
26 would correct his business practices to ensure that consumers utilizing his lending services
27 would be provided full and accurate disclosures and fair dealings in transacting business with

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3. No further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision in this matter.

4. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

5. If the Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

This Decision shall become effective at 12 o'clock noon on NOV 30 2011.

IT IS SO ORDERED 11-10-11.

BARBARA J. BIGBY
Acting Real Estate Commissioner

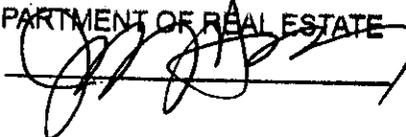


7206

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

JUL 05 2011

DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

JOHN PAUL ROCK,

Respondent.

No. H-36501 LA

OAH No. 2010041014

NOTICE

TO: JOHN PAUL ROCK, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated May 25, 2011, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated May 25, 2011, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on April 12, 2011, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of April 12, 2011, at the

///

1 Los Angeles office of the Department of Real Estate unless an extension of the time is granted
2 for good cause shown.

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 6/28/11

7
8 BARBARA J. BIGBY
9 Acting Real Estate Commissioner
10 
11

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation against:

JOHN PAUL ROCK,

License No. B/01061594

Respondent.

Case No. H – 36501 LA

OAH No. 2010041014

PROPOSED DECISION

Administrative Law Judge pro tem Elwood B. Hain, Jr., Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on April 12, 2011.

Julie L. To, Staff Counsel, represented Robin Trujillo (Complainant), Deputy Real Estate Commissioner of the State of California.

Respondent John Paul Rock represented himself.

Oral and documentary evidence was received, and the matter argued.

The matter was submitted on April 12, 2011.

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in her official capacity.
2. Respondent is licensed as broker under the Real Estate Law of the Business and Professions Code. He was first licensed as a salesperson on January 27, 1990, and first licensed as a broker on March 4, 1997. He renewed his broker license as of March 4, 2009. Respondent was also licensed as an officer of Greater Acceptance Mortgage Corp. from August 1, 1997 to July 31, 2005.

3. On August 5, 2009, the Washington State Department of Financial Institutions, Division of Consumer Services, issued a consent order that prohibited Respondent, Greater Acceptance Mortgage Corporation (GAMC) and Michael E. Smith from participating in the conduct of the affairs of any consumer lender licensed by that department for 30 years, including but not limited to: (1) any financial capacity whether active or passive; or (2) as an officer, director, principal, designated broker, employee, or loan originator; or (3) any management, control, oversight or maintenance of any trust account(s) in any way related to any residential mortgage transaction; or (4) receiving, disbursing, managing or controlling in any way, consumer trust funds in any way related to any residential mortgage transaction. The order excused Respondent and the other parties from paying otherwise applicable fines upon submission of proof of their inability to do so and required them to make restitution to four borrowers in the total amount of \$1914.74. It required Respondent and the other parties to pay an investigative fee of \$2,085.26. Respondent, GAMC and Smith consented to entry of the order.

4. The facts and circumstances leading to the order against Respondent are: Respondent was a principal owner and president of GAMC. Michael E. Smith was the other principal owner and vice president, secretary and treasurer. GAMC made consumer loans in Washington State, secured by second mortgages. Its registered place of business under its Washington consumer loan license was in Orange, California. In May 2005 the Washington Department of Financial Institutions conducted an on-site examination of GAMC in Orange County, California, at an address different from its registered place of business. The examination revealed several violations, including (1) charging one borrower an origination fee in excess of the legal maximum; (2) failure to disclose to nine borrowers in a timely fashion whether their junior lien loan contained a prepayment penalty; (3) failure to provide fifteen borrowers with good faith estimates in the required time and failure to provide the same borrowers with an Annual Percentage Rate (APR) disclosure or a prepayment penalty disclosure; (4) charging three borrowers fees that were not allowed under Washington State law; and (5) conducting business activities at a location not licensed by the Washington Department of Financial Institutions.

5. The restitution and investigative fee have been paid.

6. At the end of the examination GAMC promised to correct the discrepancies but it went out of business soon after and did not correct them. It surrendered its Washington license in October 2005.

7. From the office in California Respondent managed the GAMC loan officers or sales force, who were in Washington State. The sales force numbered twenty to forty persons. He trained and coached the loan officers and spoke to clients but could not recall meeting any clients. Smith

managed the loan processing and funding and oversaw compliance with applicable laws and regulations. Smith set the prices. The loan officers had no control over prices.

8. Respondent provided a resolution of the directors of GAMC showing that in September 2001 the board of directors increased his and Smith's salaries to \$25,000 a month and agreed to pay each of them a bonus equal to 10 per cent of any quarterly profit in excess of \$125,000, said to be the approximate average historical level of profits. The stated purpose of the bonuses was that they might "induce Mr. Smith and Mr. Rock to make the company even more profitable if some element of their compensation was directly related to the increase in the company's profits over average historical levels..." Exhibit D.

9. There have been no prior disciplinary activities against Respondent's license.

10. Respondent currently works selling women's apparel but wants to return to working in real estate.

11. Respondent has no criminal convictions. He has a wife and two children.

12. Respondent admitted his position in GAMC and his prohibition from doing business in Washington but denied any responsibility for the violations that led to the prohibition. He said the files were maintained by Smith and the prices were set by Smith. When asked about the Washington allegation that GAMC charged an excessive origination fee he responded that the loan officers closed the loans, that he was not involved in what the loan officers did nor was he involved in the files the Washington Department of Financial Institutions examined, although the loan officers were. He said only four files were out of compliance and that he has personally done nothing wrong. He said the problem was caused by the global market meltdown. He said the discipline was against the corporation and that he was barred only because his finances did not let him pay the fine Washington proposed to levy.

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code sections 10100 et seq. and Government Code sections 11500 through 11528.

2. Business and Professions Code section 10177, subsection (f), allows discipline of a real estate licensee whose license in another state has been revoked "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 . . . upon an express finding of a violation of law by the agency or entity." This

statutory language requires two things not established here: first, that the Washington State discipline be based upon established facts, and second, that those facts constitute a cause for discipline under California law. Here the Washington State consent order does not include any conclusion that Respondent or others violated any law. Rather it contains allegations. Second, the Accusation does not allege, and Complainant did not prove, that Respondent's actions amounted to a violation of California law.

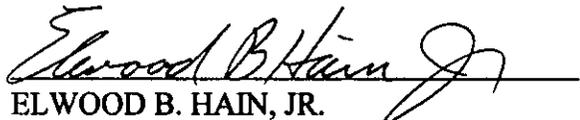
3. Cause does not exist to suspend or revoke Respondent's real estate broker license under Business and Professions Code section 10177, subsection (f).

ORDER

*Not
Adopted*

The accusation against Respondent JOHN PAUL ROCK is dismissed.

Dated: May 25, 2011


ELWOOD B. HAIN, JR.
Administrative Law Judge pro tem
Office of Administrative Hearings

1 JULIE L. TO, Counsel (SBN 219482)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6916

FILED

MAR - 8 2010

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H- 36501 LA
12 JOHN PAUL ROCK,) A C C U S A T I O N
13 Respondent.)
14 _____)

15
16 The Complainant, ROBIN TRUJILLO, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against JOHN PAUL ROCK ("Respondent"), alleges as follows:

19 1.

20 The Complainant, ROBIN TRUJILLO, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 in her official capacity.

23 2.

24 Respondent is presently licensed and/or has license
25 rights under the Real Estate Law, Part 1 of Division 4 of the
26 California Business and Professions Code ("Code"), as a real
27 estate broker.

1
2 (LICENSE DISCIPLINE)

3 3.

4 On or about August 5, 2009, the Washington State
5 Department of Financial Institutions ("DFI"), Division of
6 Consumer Services, in Case No. C-06-248-09-C001, prohibited
7 Greater Acceptance Mortgage Corporation ("GMAC"), Respondent,
8 and Michael E. Smith from participating in the conduct of the
9 affairs of any consumer lender licensed by the DFI or any person
10 subject to licensure or regulation by the DFI for 30 years,
11 including but not limited to: (1) any financial capacity whether
12 active or passive or (2) as an officer, director, principal,
13 designated broker, employee, or loan originator or (3) any
14 management, control, oversight or maintenance of any trust
15 account(s) in any way related to any residential mortgage
16 transaction or (4) receiving, disbursing, managing or
17 controlling in any way, consumer trust funds in any way related
18 to any residential mortgage transaction.
19

20 4.

21 The acts resulting in the foregoing action taken with
22 respect to Respondent's role as Principal Owner and President of
23 GMAC, as alleged herein above in Paragraph 5, constitute cause
24 under Business and Professions Code Section 10177(f) for the
25 suspension or revocation of the license and license rights of
26 Respondent under the Real Estate Law.
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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 the licenses and license rights of Respondent, JOHN PAUL ROCK, 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 2 day of March, 2010.


ROBIN TRUJILLO
Deputy Real Estate Commissioner

cc: JOHN PAUL ROCK
ROBIN TRUJILLO
Sacto.