FILED
JUL 15 2011
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-36722 LA
	)	
ARTHUR NELSON LUCULESCU,	)	L-2010100284
	)	
	)	
Respondent.	)	
	)	

DECISION

The Proposed Decision dated June 20, 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 August 4, 2011.

IT IS SO ORDERED 7/12, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ARTHUR NELSON LUCULESCU,** Respondent.	Case No. H-36722 LA OAH No. 2010100284

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 25, 2011, in Los Angeles. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Lissete Garcia, Counsel, represented Maria Suarez, Deputy Real Estate Commissioner (Complainant), California Department of Real Estate (Department).

Arthur Nelson Luculescu (Respondent) was present and represented himself.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.[1] Respondent timely submitted a Notice of Defense, which contained a request for a hearing.

2. Respondent was issued a real estate salesperson license on January 11, 2002. He is presently so licensed. He has never been licensed as a real estate broker.

3. On March 5, 2009, Respondent offered to perform loan modification services for Mary West in connection with the mortgage on her home. Respondent charged Ms. West $2,500 for the service, $1,250 to be paid up front, and the remainder to be paid upon successful completion of the transaction. Ms. West decided to give Respondent a $1,500 advance fee. Respondent promised to give her a full refund if he was unsuccessful. For reasons not fully established, Respondent was unable to get all of the necessary paperwork for the loan modification to Ms. West's lender. She became enraged over the situation and stopped cooperating with Respondent, including refusing to send him additional paperwork. Instead, she demanded a refund. Because Ms. West refused to cooperate, Respondent felt he was unable to complete the transaction. He therefore refused to give her a refund. Ms. West complained to the Department. By October of 2009, her home was foreclosed.

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[1] During the hearing, Complainant struck Business and Professions Code section 10176, subdivision (i), from paragraphs VI and VIII as cause for discipline.

4. At the time of the West transaction, Respondent was registered with the Department under the employment of broker Lion Home Financial. It was not established that the broker had any involvement in the transaction, or knowledge of it. Ms. West's check for the advance fee was made out to Respondent and he deposited it in his personal bank account. The broker learned of the transaction only after Ms. West contacted the office to complain. By then, Respondent had resigned, and the broker professed ignorance of the transaction. The broker told Ms. West that he was not responsible for the transaction because Respondent was not licensed to perform such services.[2]

5. Respondent knows that the loan modification he attempted can only be undertaken by a licensed broker or by a licensed salesperson under the authorization and supervision of a licensed broker. He also conceded during his testimony that although the office manager knew of his involvement in the West deal, his employing broker was rarely in the office and did not know of the transaction. He concedes he should have given the check from Ms. West to his broker, which demonstrates his implicit acknowledgement that he had not obtained authorization and supervision from his broker to work on this transaction.

6. Respondent has no other history of discipline with the Department. He is presently employed by a licensed broker. He admits that he performed one other loan modification during the same time period, for an elderly woman at risk of losing her home. Respondent now realizes it was wrong for him to engage in this kind of work and to accept money for it. Respondent testified persuasively that he has learned his lesson, and that he will never again engage in loan modification services, or acts which require a broker's license. He is going to focus only on home sales.

LEGAL CONCLUSIONS

1. *Cause for Discipline*. Cause was established for disciplinary action against Respondent pursuant to Business and Professions Code section 10177, subdivision (d), in that Respondent willfully violated the Real Estate Law by engaging in activity for which a real estate broker's license was required, i.e., loan modification services, in violation of section 10130. (Factual Findings 1-6.)

2. *Cause for Discipline*. Cause was established for disciplinary action against Respondent pursuant to Business and Professions Code section 10177, subdivision (d), in that Respondent willfully violated the Real Estate Law by collecting and retaining an advance fee from a consumer for performance of a loan modification without having a broker's license, in violation of sections 10026 and 10131.2. (Factual Findings 1-6.)

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[2] Pursuant to Business and Professions Code sections 10130 through 10137, a real estate broker's license is required to solicit borrowers or lenders or to negotiate loans or collect payments or perform services for borrowers or lenders or note owners in connection with loans secured by real property.

3. *Discipline.* Respondent's misconduct was serious, in that he knowingly engaged in unlicensed activity. He was paid $1,500 for that unlicensed work, which he refused to refund upon complaint by the consumer. This was not the only time that he had engaged in this type of activity. However, it was not established that Respondent's motives were to defraud Ms. West out of her money and perform no service. He intended to provide the service, but was frustrated by Ms. West's reaction to his initial stumble over getting the necessary paperwork to the lender. Respondent has no prior record of discipline, and no other evidence was presented indicating either that he has engaged in predatory real estate activity or is not otherwise a competent salesperson. In light of these circumstances, outright revocation would be overly harsh and punitive. A license restriction with proper terms, including full restitution to Ms. West, is warranted. (Factual Findings 1-6.)

ORDER

All licenses and licensing rights of Respondent Arthur Nelson Luculescu under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for seven days from the date of issuance of said restricted license.

7. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

8. Respondent shall, prior to the issuance of the restricted license and as a condition of the issuance of said restricted license, submit proof satisfactory to the Commissioner of payment of restitution in the amount of $1,500 to Ms. Mary West.

DATED: June 20, 2011

ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of ARTHUR NELSON LUCULESCU, Respondent.	No. H-36722 LA A C C U S A T I O N

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner, for cause of Accusation against ARTHUR NELSON LUCULESCU, is informed and alleges as follows:

I

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

II

At all times herein mentioned, Respondent ARTHUR NELSON LUCULESCU ("Respondent") was licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) ("Code") as a real estate

salesperson. Respondent was originally licensed by the Department of Real Estate ("Department") as a salesperson on or about January 11, 2002.

III

From March 2, 2009, through May 10, 2009, Respondent was licensed as a real estate salesperson under the employ and supervision of real estate corporation Lion Home Financial. Respondent is not now and has never been licensed by the Department as a real estate broker.

FIRST CAUSE OF ACCUSATION

(Unlicensed Activity)

IV

At all times mentioned herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate broker, within the meaning of Code Sections 10131(d), 10131.2, for or in expectation of compensation. Respondent solicited and offered to perform services for borrowers including, but not limited to, modifying and negotiating loans secured by liens on real property, and collected advance fees within the meaning of Code Sections 10026 and 10131.2.

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V

On or about March 05, 2009, Respondent solicited M. West ("West") and offered to perform loan modification services for borrower West including the negotiation of loans secured directly by liens on real property located in the city of Compton, California. Respondent charged West $2,500 for the loan negotiation and modification services. On March 7, 2009, West paid Respondent an advance fee of $1,500. Respondent failed to perform the services promised or to obtain a loan for West on more favorable terms.

VI

The conduct, acts and/or omissions by Respondent, as set forth in Paragraph V above, in performing activities requiring a real estate broker license when Respondent was licensed as a real estate salesperson under the employ and supervision of a licensed real estate broker is in violation of Code Section 10130 and constitutes grounds to revoke the real estate license and/or license rights of Respondent pursuant to Code Sections 10130, 10177(d), 10177(g), 10176(i) and/or 10177(j).

SECOND CAUSE OF ACCUSATION

(Advance Fee Violation)

VII

There is hereby incorporated in this second, separate and distinct Cause of Accusation, all of the allegations contained in Paragraphs I through VI, with the same force and effect as if herein fully set forth.

VIII

The conduct, acts and/or omissions of Respondent as set forth in Paragraphs IV and V above, in collecting advance fees from prospective borrower West for performance of loan modification and loan negotiation services, was in violation of Code Sections 10026 and 10131.2, and constitutes grounds to discipline the licenses and license rights of Respondent pursuant to Code Sections 10177(d), 10176(i), 10177(j) and/or 10177(g).

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/or license rights of Respondent ARTHUR NELSON LUCULESCU under the Real Estate Law and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 25th day of June, 2010.

MARIA SUAREZ
Deputy Real Estate Commissioner

cc: Arthur Nelson Luculescu
Maria Suarez
Sacto.
CBD Investment, Inc.