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JUL 24 2012

DEPARTMENT OF REAL ESTATE

BY: [signature]

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of	)	No. H-37627 LA
	)	
	)	L-2011121043
MARIA ELENA GARCIA,	)	
	)	
	)	
Respondent(s).	)	
	)	

DECISION

The Proposed Decision dated June 21, 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.

This Decision shall become effective at 12 o'clock noon on AUG 13 2012.

IT IS SO ORDERED 7/11/2012.

Real Estate Commissioner

[signature]

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MARIA ELENA GARCIA, Respondent.	Case No. H 37627 LA OAH No. 2011121043

PROPOSED DECISION

Administrative Law Judge Elwood B. Hain, Jr., Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 22, 2012.

James Peel, Staff Counsel, represented Maria Suarez (Complainant), a Deputy Real Estate Commissioner in the Department of Real Estate (Department), State of California.

Maria Elena Garcia (Respondent) represented herself.

Oral and documentary evidence was received, and the matter was argued and submitted on May 22, 2012. The Administrative Law Judge issues the following factual findings, legal conclusions and order.

FACTUAL FINDINGS

Jurisdiction

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

2. Respondent is licensed as a salesperson under the Real Estate Law.[1] She was first licensed as a salesperson on May 19, 1995, and has been licensed continuously since, including at the time of the events that led to this Accusation. Respondent has never been licensed as a real estate broker.

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1 Business and Professions Code section 10000 et seq. All further statutory citations are to the Business and Professions Code.

Unlicensed Real Estate Brokerage Activities

3. Respondent was employed from September 22, 1997, to March 13, 2009, as a salesperson at Beachside Realtors, a licensed real estate broker doing business as Century 21 Beachside Realtors in Huntington Beach, California. Beachside Realtors terminated her services on March 13, 2009. She is not currently employed as a real estate sales person.

4. Respondent owned and operated Maria Elena's Legal Services in Costa Mesa, California, for more than ten years. She closed the business at the end of 2010.

5. In October 2008 Respondent agreed to help Cesar and Rosa Ortega with a short sale of their house located at 10129 Willowbrook Road, Riverside, California. The Ortegas paid Respondent, doing business as Maria Elena's Legal Services, a total of $3000 in advance for her services. Respondent planned to perform the work as Maria Elena Legal Services and did not inform her broker, Beachside Realty, of the agreement. She did not deliver the $3000 to her broker, Beachside Realty, or deposit it in an escrow account or in a trust account. She prepared the forms the Ortegas needed to apply to the bank for a short sale but they refused sign or submit the papers to the bank. They had changed their minds and wanted to try to keep their house. Respondent agreed to represent them in negotiating a modification of the property's mortgage with the bank. On their behalf she submitted an application to the bank for that purpose. Before the bank responded to Respondent, the Ortegas contacted it directly. They did not get a loan modification. The Ortegas and the bank agreed that Cesar and Rosa Ortega would pay the arrears on their loan and resume payments under the existing note. Respondent's supervising broker of record was unaware of the sales and loan activities in which Respondent engaged on behalf of Cesar and Rosa Ortega.

6. In November 2008, Respondent agreed to provide loan modification assistance to Irene and Humberto Ortega, Jr., pertaining to the loan on their house located at 233 Galiceno Drive, San Jacinto, California. Respondent planned to perform the work as Maria Elena Legal Services and did not inform Beachside Realty of the agreement. Consequently Respondent's supervising broker of record was unaware of the loan modification agreement Respondent entered into with Irene and Humberto Ortega, Jr. Irene Ortega paid her $1500 in advance for her services. Respondent did not deliver the money to Beachside Realty, or deposit it in an escrow or trust account. She did not contact the bank about the loan modification, and, after some time had passed, Irene Ortega asked Respondent to refund their money and Respondent promised to do so. As she had no money available, she arranged with Beachside Realty to instruct an escrow company to pay Ms. Ortega $1,500 from a commission Respondent was expecting to receive for an unrelated sale. Although both Respondent and Beachside instructed the escrow company in March 2009 to make the payment to Ms. Ortega, it did not do so and Respondent received the entire amount of her commission. She did not repay Irene and Humberto Ortega, Jr., when she got the payment from the escrow company. In July 2011, after the Department had contacted Respondent in

connection with a complaint filed by Irene Ortega, Respondent sent her two money orders totaling $1,500. Respondent misappropriated the $1,500 payment when she delayed two and one-half years before refunding the money to Irene and Humberto Ortega.

7. Soon after Respondent agreed to refund money to Irene Ortega, Cesar Ortega learned of it and asked Respondent to give his money back too. Respondent did not have the money. She refused to refund it, claiming she had done everything she had agreed to do for Cesar and Rosa Ortega. Respondent continues to refuse to refund their money and continues to assert that she has earned it.

Rehabilitation Evidence

8. Respondent testified fully and frankly about the events leading to this Accusation. She has recently become the minister of her church.

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of the Real Estate Law (§10000 et seq.)

2. The Real Estate 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 willfully disregarded or violated the Real Estate Law (§§ 10000 et seq. and 10177, subd. (d)); acted or conducted herself in a manner that would have warranted the denial of her application for a real estate license (§ 10177, subd. (f)); demonstrated negligence or incompetence in performing an act for which a license is required (§ 10177, subd. (g)); or engaged in other conduct which constitutes fraud or dishonest dealing. (§ 10177, subd. (j).)

3. Under section 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."

4. Pursuant to section 10131, a real estate broker is "a person who, for compensation or in expectation of compensation does or negotiates to, among other things, solicit borrowers or lenders for or negotiates loans or performs services for borrowers in connection with loans secured directly or collaterally by liens on real property, or 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 and performs services for the holders thereof. (§ 10131, subds. (d) and (e).)

5. Section 10132 defines a real estate salesperson as a person employed by a licensed real estate broker to perform any of several acts, including those listed in Code section 10131.

6. Section 10145, subdivision (c), provides that 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.

Mortgage Modification and Property Transactions

7. Cause exists to suspend or revoke Respondent's real estate salesperson license under section 10177, subdivision (d) for willfully disregarding or violating sections 10130 and 10131, subdivision (d), by acting as a real estate broker without a broker's license, as set forth in Factual Findings 3 through 5 and Legal Conclusions 2, 3 and 4. Respondent provided real estate sales services, and agreed to provide loan modification services, to Cesar and Rosa Ortega. Specifically, Respondent received a payment of $3,000 from Cesar and Rosa Ortega to help them sell their real property and renegotiate their mortgage on the property. She did not make her supervising broker aware of the transaction and did not place the money in her broker's trust account or in an escrow, while entering into the transaction on behalf of her own business, Maria Elena's Legal Services. In soliciting a lender for a new loan and performing other services for borrowers in connection with a loan secured by a lien on real property for compensation, she acted as a real estate broker without being licensed in violation of sections 10130 and 10131, subdivision (d).

8. Cause also exists to suspend or revoke Respondent's real estate salesperson license under section 10177, subdivision (d) for willfully disregarding or violating sections 10130 and 10131, subdivision (d), by acting as a real estate broker without a license, as set forth in Factual Findings 3, 4 and 6 and Legal Conclusions 2, 3 and 4. Respondent, doing business as Maria Elena's Legal Services, received a $1,500 payment from Irene and Humberto Ortega, Jr., to help them renegotiate their mortgage loan. Respondent negotiated to solicit a lender for a new loan, to perform other services in connection with a loan secured by a lien on real property and received compensation for doing so, thereby acting as a real estate broker, pursuant to section 10131 subdivision (d). Respondent did not make her supervising broker aware of the transaction, nor did Respondent have a broker's license. In doing these acts, Respondent violated sections 10130 and 10131, subdivision (d).

9. Cause exists to suspend or revoke Respondent's real estate salesperson license under section 10177, subdivision (g), for negligence or incompetence in performing acts for which a license is required. Respondent misappropriated payments of $3,000 and $1,500 received from clients for her own use, did not transfer the payments to her broker's trust account or an escrow, acted as a real estate broker without being licensed as a broker by entering into agreements with Irene and Humberto Ortega, Jr., and Cesar and Rosa Ortega to perform acts requiring a broker's license, and failed to provide the loan modification assistance she had agreed with Irene and Humberto Ortega, Jr., to perform. (Factual Findings 3 through 7 and Legal Conclusions 2 through 5, 7 and 8.)

10. Cause exists to suspend or revoke Respondent's license pursuant to section 10177, subdivision (j) for fraud or dishonest dealing. By failing to return payments made to her by Cesar and Rosa Ortega and Irene and Humberto Ortega, Jr. and failing to perform the loan modification services for Irene and Humberto Ortega, Jr., Respondent converted the funds to her own use. (Factual Findings 5 through 7; Legal Conclusions 2 and 9.)

11. Cause exists to suspend or revoke Respondent's license under section 10177, subdivision (f) for acting or conducting herself in a manner that would have warranted the denial of her application for a real estate license by acting as a real estate broker without a license in violation of sections 10130 and 10131, subdivision (d), misappropriated payments of $3,000 and $1,500 received from Cesar and Rosa Ortega and Humberto and Irene Ortega, respectively, as set forth in Factual Findings 3 through 7 and Legal Conclusions 2 through 10.

12. Cause does not exist to suspend or revoke Respondent's real estate salesperson license under section 10177, subdivisions (d), (f), (g) or (j), in that it was not shown that Respondent violated section 10131, subdivision (e). Respondent agreed with Irene and Humberto Ortega, Jr. and Cesar and Rosa Ortega, to help them "exchange . . . a promissory note secured . . . by a lien on real property," but did not perform or agree to perform services for the holder of the note, which was the bank. (Factual Findings 3 through 6; Legal Conclusions 2 through 4.)

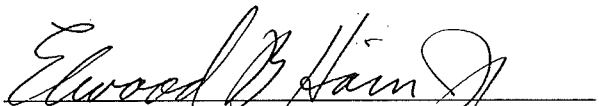
13. Cause does not exist to suspend or revoke Respondent's license under section 10177, subdivisions (d), (f), (g) or (j), in that she did not violate section 10145, subdivision (c). She accepted $3,000 from Cesar and Rosa Ortega and $1,500 from Irene and Humberto Ortega, Jr., and did not deliver the funds to her employing broker or deposit them in an escrow depository or trust account. Her failure to do so did not violate Code section 10145 subdivision (c) because in accepting the funds she did not act on behalf of the broker under whom she was licensed. (Factual Findings 2 through 6 and Legal Conclusions 2 and 6.)

14. Although Respondent spoke with candor in admitting the facts alleged in this matter, she exhibited a scant understanding of the legal requirements applicable to real estate salespersons or brokers. The accompanying order is therefore necessary to protect the public interest.

ORDER

All licenses and licensing rights of Respondent Maria Elena Garcia under the Real Estate Law are revoked.

Dated: June 21, 2012



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

Sacto Flag

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DEPARTMENT OF REAL ESTATE
BY: [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MARIA ELENA GARCIA, Respondent.	No. H-37627 LA A C C U S A T I O N

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MARIA ELENA GARCIA, alleges as follows:

1. The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against MARIA ELENA GARCIA.

2. MARIA ELENA GARCIA (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).

3. At all times herein mentioned, Respondent was licensed by the Department of Real Estate of the State of California as a real estate salesperson employed by licensed real estate broker Beachside Realtors dba Century 21 Beachside Realtors.

4. In or about September and October, 2008, for or in expectation of compensation, Respondent solicited and negotiated a re-finance loan and loan modification on real property located at 10129 Willowbrook Road, Riverside, California, for borrowers Cesar H. Ortega and Rosa E. Ortega. Respondent accepted $3,000 in advance from borrowers for loan modification services.

5. In or about November, 2008, for or in expectation of compensation, Respondent solicited and negotiated a re-finance loan and loan modification on real property located at 233 Galiceno Drive, San Jacinto, California, for borrowers Irene Ortega and Humberto Ortega, Jr. Respondent accepted $1,500 in advance from borrowers for loan modification services.

6. Respondent's employing broker was not aware of the above transactions.

7. Respondent violated Code Section 10145(c) by collecting advance fees from the borrowers Cesar H. Ortega and Rosa E. Ortega and Irene Ortega and Humberto Ortega, Jr. and failed to forward the funds about $1,500 and $3,000 (total $4,500) to her employing broker.

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

9. Respondent misappropriated the funds she received from the borrowers Cesar H. Ortega and Rosa E. Ortega and Irene Ortega and Humberto Ortega, Jr. without the knowledge or permission of the borrowers.

10. The conduct of Respondent, as alleged above, subjects her real estate license and license rights to suspension or revocation pursuant to Sections 10177(f) and 10177(j) of the Code, and Sections 10177(d) and/or 10177(g) for violation of Code Sections 10130 and 10145(c).

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 MARIA ELENA GARCIA 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 26th day of October, 2011.

MARIA SUAREZ
Deputy Real Estate Commissioner

cc: Maria Elena Garcia
Chris Woodard
Maria Suarez
Sacto.