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OCT 25 2013

BUREAU OF REAL ESTATE

By

BEFORE THE BUREAU[1] OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation against TRANSWORLD GROUP, INC., a corporate Real estate broker; and KENNETH JAMES PELTZ, individually and as designated broker-officer of Transworld Group, Inc., Respondents.	No. H-38065 LA L-2012060219

DECISION AFTER REJECTION

Glenda Gomez, Administrative Law Judge ("ALJ"), Office of Administrative Hearings heard this matter January 23, 2013, in Los Angeles, California.

James Demus, Real Estate Counsel, represented Complainant Robin Trujillo, Deputy Real Estate Commissioner. Respondent KENNETH JAMES PELTZ was present and represented himself. Danny Siag, President of TRANSWORLD GROUP, INC. was present and represented Respondent TRANSWORLD GROUP, INC.

[1] On July 1, 2013, the Department of Real Estate became the Bureau of Real Estate, Department of Consumer Affairs. All references the agency will be to the successor, Bureau of Real Estate.

Oral and documentary evidence was received and argument was heard on January 23, 2013. The record remained open until February 6, 2013 for the submission of additional documents by Respondent and objections from Complainant. Documents were received, marked and admitted, the record was closed and the matter was submitted for decision on February 6, 2013.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondents were served with notice of my determination not to adopt the Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondents were notified that I would decide the case upon the record, the transcript of proceedings held on January 23, 2013, and upon any written argument offered by Respondents and Complainant. Complainant and Respondent PELTZ submitted further written argument.

Effective October 21, 2013, in Bureau Case No. H-38024 LA, Respondent PELTZ's real estate broker licenses and license rights were revoked. [2]

I have given careful consideration to the record in this case, including the transcripts of proceedings of January 23, 2013. I have also considered the arguments submitted by Complainant and Respondents. The following shall constitute the Decision of the Real Estate Commissioner ("Commissioner") in this proceeding:

FINDINGS OF FACT

1. The Complainant brought the Accusation in her official capacity.

2. Respondent TRANSWORLD GROUP, INC. ("TRANSWORLD") is a California corporation licensed as a corporate real estate broker. TRANSWORLD was first licensed as a real estate broker in 1979. At all times relevant, TRANSWORLD was licensed to act by and through PELTZ as its broker-officer designated pursuant to Business and Professions Code Section 10159.2 to be responsible for supervising the activities of the corporation's employees and agents to ensure compliance with the Real Estate Law.

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[2] The fact of the revocation of Respondent PELTZ's broker license and license rights occurred after the record in this matter was closed, but before the rendering of this Decision After Rejection. It is a matter of public record of which Respondent PELTZ is aware.

3. At all times relevant to the Accusation, Respondent KENNETH JAMES PELTZ ("PELTZ") was licensed as a real estate broker. PELTZ was first licensed as a broker in 1978. At all times relevant, Respondent PELTZ was the designated broker-officer of Respondent TRANSWORLD. During the relevant time period, Respondent PELTZ was also the designated broker-officer of 17 other corporate real estate brokers.

4. (a) Respondent PELTZ's real estate broker license was previously disciplined in 1991, in Case No. H-24569 LA. His license was suspended for thirty days for violating Business and Professions Code Section 10137.

(b) Subsequent to the rejection of the ALJ's Proposed Decision, effective October 21, 2013, in Bureau Case No. H-38024 LA, Respondent PELTZ's real estate broker license and license rights were revoked.

5. Danny Siag ("Siag") is the corporate president and CEO of TRANSWORLD. Siag is licensed as a real estate salesperson. He has been licensed as a salesperson since 1997, and TRANSWORLD has always been his supervising employing broker.

Audit No. LA 10155

6. On May 31, 2011, Bureau auditor Godswill Keraroru completed an audit examination of the books and records of Respondent TRANSWORLD for the period of February 1, 2008 to January 31, 2011. The audit was conducted intermittently from March 7, 2011 through May 31, 2011. The auditor examined the independent contractor agreements, broker and corporate licenses, a written response from Respondents, sales and listing transaction files, and loan modification agreements and files. He also interviewed Respondent PELTZ and Siag. During the audit period, Respondents acted as real estate brokers and engaged in activities requiring a real estate license including selling or offering to sell real property, negotiating loans, and performing services for borrowers in connection with loans secured directly or collaterally by liens on real property.

7. The audit examination (No. LA10155) revealed violations of the Business and Professions Code ("Code") and of Title 10, Chapter 6 of the California Code of Regulations

("Regulations"). Although the Respondents did not maintain a trust account, Respondents did handle trust funds in the form of advance fees paid for loan modification services. The Audit Report for examination no. LA 10155 set forth the following specific violations:

(a) TRANSWORLD commingled advance fees received from borrowers into TRANSWORLD's general account (from which it paid its own business expenses, etc.) in violation of Code Section 10176(e) and Regulation 2835.

(b) TRANSWORLD failed to keep a record of all trust funds received and disbursed for advance fees deposited in its general account in violation of Code Section 10145 and Regulation 2831.

(c) With respect to advance fees paid into TRANSWORLD's general account, there were no separate records kept and no reconciliation with records of all trust funds received and disbursed, in violation of Code Section 10145 and Regulation 2831.2.

(d) TRANSWORLD failed to maintain a separate record for the beneficiaries of the advance fees deposited into TRANSWORLD's general account, in violation of Code Section 10145 and Regulation 2831.1.

(e) TRANSWORLD collected advance fees from borrowers and did not deposit the advance fees into a trust account, in violation of Code Section 10146.

(f) TRANSWORLD collected advance fees from borrowers in connection with loan modification transactions without submitting an advance fee agreement to the Commissioner 10 days before its use, in violation of Code Section 10085 and Regulation 2970.

(g) TRANSWORLD collected advance fees from borrowers in connection with loan modification transaction without providing an accounting of the fees to its clients, in violation of Code Section 10146 and Regulation 2972.

(h) TRANSWORLD did not retain original salespersons' licenses at its main business office and did not make them available for inspection by the auditor, in violation of Code Section 10160 and Regulation 2753.

8. At the time of the audit, Respondent TRANSWORLD had four licensed real estate salespersons: Danny Siag, Ivan Morales, Julie Vivir Ayala, and Phillip Brian Sutton. Respondents did not possess the real estate salesperson licenses of Ivan Morales and Julie Vivir Ayala. The auditor advised Respondent PELTZ that the failure to have possession of the licenses was a violation of real estate law and regulations, PELTZ then notified Morales and Ayala in writing that he was terminating their relationships with TRANSWORLD effective March 15, 2011, and PELTZ subsequently notified the Bureau of the terminations. At hearing, PELTZ testified that Ivan Morales left the country shortly after associating with TRANSWORLD and Julie Vivir Ayala had not provided an updated current license certificate despite his request that she do so.

9. During the audit, PELTZ and Siag produced records for three sales transactions and four loan modifications that were closed during the audit period (February 2008-the end of January 2011). Of the four loan modifications, three transactions were flagged by the auditor as having advance fee payments. Those transactions were for consumers "RA", "TC" and "JA".

10. In the RA transaction, RA signed an agreement on January 14, 2009 to pay TRANSWORLD a $6,000 non-refundable fee for loan modification services. The fee schedule called for $3,000 to be paid on signing of the agreement, and $3,000 to be paid at the conclusion of the modification. TRANSWORLD received a $1,000 payment by check dated August 25, 2009. RA's loan modification was approved by RA's lender on October 14, 2009. TRANSWORLD billed RA for $1,000 on December 3, 2009. The records do not indicate whether RA ever paid the remaining $5,000 referenced in the agreement.

11. The agreement between RA and Respondent TRANSWORLD was an advance fee agreement and RA's August 25, 2009 payment was an advance fee payment.

12. In the TC transaction, TC signed an agreement on February 10, 2009, to pay TRANSWORLD a $3,500 non-refundable fee for loan modification services. The fee schedule was $1,500 paid on signing of the agreement, $500 upon signing of forbearance documents and $500 upon signing of a modification agreement. TC's loan modification was approved by TC's

lender on February 10, 2009. TRANSWORLD received a check dated August 24, 2009 for $1,500 from TC. TRANSWORLD billed TC for an additional $1,000 progress payment on December 3, 2009. On April 22, 2010, TRANSWORLD sent TC an invoice which showed a credit for the initial $1,500 paid and a balance of $2,000 as "due now." The $2,000 was never paid.

13. The agreement between TC and TRANSWORLD was an advance fee agreement. The August 24, 2009 payment was made after all services were rendered and the loan modification was complete, and was therefore not an advance fee payment.

14. In the JA transaction, JA did not sign an agreement for loan modification services and Respondents did not collect a fee before starting loan modification negotiations. Respondent sent JA an invoice for $1,500 in February of 2009. JA sent Respondents a check dated August 25, 2009 in the amount of $1,500. JA received a loan modification on February 4, 2010.

15. JA's August 25, 2009 payment of $1,500 was an advance fee payment for work that had not been completed.

16. Respondent TRANSWORLD did not maintain a trust account during the audit period. Respondent PELTZ testified that is was his practice as a broker not to have trust accounts. PELTZ testified that Respondents deposited funds received for sales transactions directly into escrow. Respondents deposited all funds received for loan modification services into the TRANSWORLD general account. PELTZ testified that he believed that all funds received on loan modifications had been earned and were not advance fees or trust funds. He was not correct.

17. Respondent PELTZ testified that he personally drafted the loan modification agreements used in each transaction after deliberate consultation with various real estate organizations. He apparently crafted payment schedules with the rules about advance fees in mind. Nonetheless, he never submitted drafts of the proposed advance fee agreements to the

Bureau, or otherwise sought or received approval from the Bureau for them, or for any advertising materials related to the advance fee agreements.

18. Respondents made notations in the transaction logs for each of the loan modifications when fees were received, but did not maintain separate records of advance fees deposited into the general account, trust funds received, or trust funds deposited into the TRANSWORLD general account. Respondents contend that they never received advance fees or trust funds and that all funds received were earned at the time of receipt. However, as set forth in Findings of Fact Nos. 10 and 14, that was not true.

19. During the audit period, Respondent PELTZ was licensed as the designated broker officer of 17 licensed corporate real estate brokers in addition to TRANSWORLD. When asked how he exercised supervision over TRANSWORLD, Respondent PELTZ initially testified that he was present at the TRANSWORLD office for eight hours every weekday. However, when asked how he exercised supervision over all the various corporations at one time, Respondent replied, "I would drive around without notice and just stop into the office and start digging through the files...The files were available to me." PELTZ stated that he would visit two to five of the businesses a day, depending on location, but not every day. PELTZ then modified his estimate of time spent at TRANSWORLD to four or five hours per day. PELTZ described an overall policy of not accepting trust funds. He could not explain why he drafted a loan modification agreement that called for up front fees to be paid when he did not have a trust account and office procedures in place to handle them.

20. The ALJ noted in her Proposed Decision that, "Respondents have demonstrated a confusion and ignorance of basic laws and practices essential to the real estate profession." Respondent PELTZ persistently denied responsibility for following trust handling laws, erroneously assuming that he had crafted agreements with fee schedules that would prevent payments of fees prior to their having been fully earned. PELTZ did not submit the agreements to the Bureau for review and did not keep adequate records, or he would have recognized his error.

LEGAL CONCLUSIONS

1. Grounds exist to discipline Respondent TRANSWORLD's corporate broker license and Respondent PELTZ's real estate broker license pursuant to Business and Professions Code ("Code") Sections 10085, 10160, 10165, 10145, 10146, 10176(e), and 10177(d), in conjunction with Title 10, Ch. 6 of the California Code of Regulations ("Regulations"), Regulations 2970, 2753, 2831, 2831.1, 2831. 2, and 2972 for collecting advance fees from borrowers without submitting and advance fee agreement to the Bureau, for placing advance fees into a general account and commingling them with other funds, for failing to maintain proper trust accounting records, and for failing to maintain possession of the salesperson licenses of employees.

2. Grounds exist to discipline Respondent PELTZ's real estate broker license pursuant to Code Sections 10159.2 and 10177(h), and 10177(d) for failing to exercise reasonable supervision over the activities of TRANSWORLD's employees and agents to ensure compliance with the Real Estate Law. PELTZ's failed to have possession of all real estate salespersons licenses in violation of Code Section 10160 and Regulation 2753; failed to obtain DRE approval of the advance fee agreement in violation of Code Section 10085 and Regulation 2970; and failed to maintain a trust account and appropriate records of receipt and disbursement of advance fees and trust funds in violation of Code Sections 10145 and 10146, and related Regulations 2831, 2831.1, 2831.2 and 2972.

3. The Real Estate Law contained in the Business and Professions Code and related Regulations details how real estate transactions are to be conducted by licensees. It establishes employment criteria, sets forth disclosures that must be made during the course of transactions, provides for a system of handling and accounting for trust funds, and so forth. Under the real estate law, salespersons are only authorized to act under the supervision of brokers, and corporations must have a designated broker to be responsible for supervision.

4. Corporations are "persons" under the Real Estate Law, and may obtain real estate licenses. (Code Section 10006) However, a licensed corporate broker may act only through a designated

corporate officer who is a licensed broker. Business and Professions Code Section 10211 requires that the corporation designated a supervising broker in its application for real estate license. If there is no licensed officer, the corporation cannot perform licensed activities. (Code Section 10211; Regulation 2740)

5. The Real Estate Law and the disciplinary procedures provided for in the Real Estate Law are designed to protect the public and to achieve the maximum protection for the purchasers of real property and those dealing with real estate licensees. Real estate licensees act as fiduciaries in their dealings with the public. Real estate brokers hold money and other personal property on behalf of clients, and supervise the conduct of salespersons and others under their employ. (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; Golde *v. Fox* (1976) 98 Cal.App.3d 167, 177; *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402). The public dealing with licensees who are brokering mortgage loans are entitled to rely on real estate agents' expertise and integrity in representing them. (*Wyatt v. Union Mortgage Company et al. (1979)* 24 Cal.3d 773. The purpose of these disciplinary proceedings is to protect the public not only from conniving agents, but also from those who lack the requisite skill and knowledge.

6. In this case, Respondent PELTZ, as designated broker-officer of TRANSWORLD, was responsible for supervising the company's real estate activities. As designated broker-officer, PELTZ was responsible for keeping track of the agents and employees of TRANSWORLD, maintaining proper licensing records and notifying the Bureau of changes in employment or status of salespersons. PELTZ was also responsible for making sure adequate policies and procedures were in place to handle and account for client funds entrusted in TRANSWORLD's care, to ascertain if fees had been earned, and to ensure that fee agreements complied with the real estate law. Although he has been licensed as a broker since 1978, PELTZ demonstrated a "confusion and ignorance of basic laws and practices essential to the real estate profession.

7. Respondent PELTZ's real estate licenses and license rights were revoked in Bureau Case No. H-38024 LA, effective October 21, 2013. Therefore, the following order is necessary to protect the public.

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ORDER

I. TRANSWORLD GROUP, INC.

All licenses and license rights of Respondent TRANSWORLD GROUP, INC. (TRANSWORLD) under the Real Estate Law are revoked; provided however, a restricted real estate broker license shall be issued to TRANSWORLD pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Bureau 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 TRANSWORLD 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 TRANSWORLD 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 TRANSWORLD 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 TRANSWORLD 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 two years have elapsed from the effective date of this Decision.

II. KENNETH JAMES PELTZ

All licenses and license rights of Respondent KENNETH JAMES PELTZ under the Real Estate Law were revoked effective October 21, 2013 in Bureau Case No. H-38024 LA. This Decision After Rejection affirms that revocation.

This Decision shall become effective at 12 o'clock noon on NOV 26 2013

IT IS SO ORDERED Oct. 25, 2013.

REAL ESTATE COMMISSIONER

Wayne S. Bell

FILED

JUN 20 2013

DEPARTMENT OF REAL ESTATE
BY: Laura B. Olson

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of TRANSWORLD GROUP, INC., and KENNETH JAMES PELTZ, individually and as designated officer of Transworld Group, Inc., Respondents.	NO. H-38065 LA OAH NO. 2012070326

NOTICE

TO: Respondents TRANSWORLD GROUP, INC. and KENNETH JAMES PELTZ

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated May 20, 2013, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated May 20, 2013, 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 January 23, 2013, and 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 January 23, 2013, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

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

DATED: JUN 13 2013

REAL ESTATE COMMISSIONER

By: Jeffrey Mason
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation against: TRANSWORLD GROUP, INC., And KENNETH JAMES PELTZ, individually and as designated officer of Transworld Group, Inc., Respondents.	Case No. H-38065 LA OAH No. 2012060219

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on January 23, 2013, in Los Angeles, California. James Demus, Real Estate Counsel, represented Complainant Robin Trujillo, Deputy Real Estate Commissioner of the State of California (Complainant). Respondent Kenneth James Peltz (Respondent Peltz) represented himself. Danny Saig, President of Transworld Group, Inc., represented Respondent Transworld Group, Inc. (Respondent Transworld).

Oral and documentary evidence was received, and argument was heard on January 23, 2013. The record remained open until February 6, 2013, for the submission of additional documents by Respondents and objections from Complainant. Documents were received, marked, and admitted as exhibits B and 6 respectively, the record was closed, and the matter was submitted for decision on February 6, 2013.

FACTUAL FINDINGS

1. Robin Trujillo, Deputy Real Estate Commissioner (Complainant), filed the Accusation in her official capacity. The Accusation was amended by interlineation at hearing on page 2, line 13, to replace "2011" with "2001."

2. The Department of Real Estate (DRE) issued Real Estate Broker license number 00445900 to Respondent Peltz on October 30, 1978. The license will expire on October 29, 2014, unless renewed.

3. The DRE issued real estate corporation license number 01226147 to Respondent Transworld on September 15, 1997. Respondent Peltz was its designated officer pursuant to Business and Professions Code (Code) section 10159.2 during all relevant times. The license will expire on November 18, 2013, unless renewed.

4. The DRE issued Real Estate Salesperson license number 01229864 to Danny Saig on October 30, 1997. The license will expire on December 16, 2013, unless renewed. Danny Saig is not named as a respondent in this case.

5. On May 31, 2011, DRE auditor Godswill Keraoru completed an audit examination of the books and records of Respondents for the period of February 1, 2008 to January 31, 2011 (audit period). The audit was conducted intermittently from March 7, 2011, through May 31, 2011. The auditor examined the independent contractor agreements, broker and corporate licenses, a written response from the Respondents, sales and listing transaction files, and loan modification agreements and files. He also interviewed Respondent Peltz and Danny Saig.

6. At the time of the audit, Respondent Transworld had four licensed real estate salespersons: Danny Siag, Ivan Morales, Julie Vivir Ayala and Phillip Brian Sutton. Respondents did not possess the real estate salesperson licenses of Ivan Morales and Julie Vivir Ayala. After the auditor advised Respondent Peltz that the failure to have possession of the licenses was a violation of real estate law and regulations, Respondent Peltz took immediate action. Peltz notified Morales and Ayala in writing that he was terminating their relationships with Respondent Transworld effective March 15, 2011, and subsequently notified the DRE of the terminations. At hearing, Respondent Peltz credibly testified that Ivan Morales left the country shortly after associating with Respondent Transworld and Julie Vivir Ayala had not provided an updated current license certificate despite his requests that she do so.

7. During the audit period, Respondents acted as real estate brokers and engaged in activities requiring a real estate license including, selling or offering to sell real property, negotiation of loans, and performing services for borrowers in connection with loans secured directly or collaterally by liens on real property.

8. Respondent Transworld closed three sales transactions and performed four loan modifications during the audit period. Of the four loan modifications, three transactions were flagged by the auditor as having advance fee payments. Those transactions were for RA[1], TC and JA.

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[1] Initials are used to protect the privacy of the clients.

9. In the RA transaction, RA signed an agreement on January 14, 2009, to pay Respondent Transworld a $6,000 non-refundable fee for loan modification services. The fee schedule was $3,000 paid on signing of the agreement, and $3,000 at the conclusion of the modification. Respondent Transworld received a $1,000 payment by check dated August 25, 2009. RA's loan modification was approved by RA's lender on October 14, 2009. Respondent Transworld billed RA for $1,000 on December 3, 2009. The records do not indicate whether RA ever paid the remaining $5,000 referenced in the agreement.

10. The agreement between RA and Respondent Transworld was an advance fee agreement and RA's August 25, 2009 payment was an advance fee payment.

11. In the TC transaction, TC signed an agreement on February 10, 2009, to pay Respondent Transworld a $3,500 non-refundable fee for loan modification services. The fee schedule was $1,500 paid on signing of the agreement, $500 upon signing of forbearance documents and $500 upon signing of a modification agreement. TC's loan modification was approved by TC's lender on February 10, 2009. Respondent Transworld received a check dated August 24, 2009 for $1,500 from TC. Respondent Transworld billed TC for an additional $1,000 progress payment on December 3, 2009. On April 22, 2010, Respondent Transworld sent TC an invoice which showed a credit for the initial $1,500 paid and a balance of $2,000 as "due now." The $2,000 was never paid.

12. The agreement between TC and Transworld was an advance fee agreement. The August 24, 2009 payment was made after all services were rendered and the loan modification was complete and is therefore not an advance fee payment.

13. In the JA transaction, JA did not sign an agreement for loan modification services and Respondents did not collect a fee before starting loan modification negotiations. Respondents sent JA an invoice for $1,500 in February of 2009. JA sent Respondents a check dated August 25, 2009 in the amount of $1,500. JA received a loan modification on February 4, 2010.

14. JA's August 25, 2009 payment of $1,500 was an advance fee payment for work that had not been completed.

15. Respondent Transworld did not maintain a trust account during the audit period. Respondents deposited funds received for sales transactions directly into escrow. Respondents deposited all funds received for loan modification services into the Transworld general account. Respondents believed that all funds received on loan modifications had been earned and were not advance fees or trust funds. Respondents never sought or received approval from the DRE for the advance fee agreements or any advertising materials related to the advance fee agreements.

16. Respondents made notations in the transaction logs for each of the loan modifications when fees were received, but did not maintain separate records of advance fees deposited into the general account, trust funds received, or trust funds deposited into the Transworld general account. Respondents contend that they never received advance fees or trust funds and that all funds received were earned at the time of receipt.

Costs of Investigation and Prosecution

17. Complainant did not introduce any evidence to support her prayer for costs of investigation and prosecution of this matter.

LEGAL CONCLUSIONS

1. Business and Professions Code (Code) section 10159.2, subdivision (a) provides that the officer designated by a corporate broker licensee shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the real estate law, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

2. Code section 10026 provides that an advance fee is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license before fully completing the service the licensee contracted to perform or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the application of this division.

3. Code section 10130 provides that it is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson without having a license.

4. Code section 10131, subdivision (a) provides that a real estate broker is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers or, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or of a business opportunity.

5. Code section 10131, subdivision (d) provides that a real estate broker is also a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, 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 business opportunities.

6. Code section 10131.2 provides that a real estate broker is also a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property.

7. Code section 10145, subdivision (a) (1) provides that a real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

8. Code section 10146 provides that any real estate broker who contracts for or collects an advance fee from any other person, shall deposit any such amount or amounts, when collected, in a trust account with a bank or other recognized depository. Such funds are trust funds and not the funds of the agent. Amounts may be withdrawn therefrom for the benefit of the agent only when actually expended for the benefit of the principal or five days after the verified accounts have been mailed to the principal. Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of the trust account.

9. Code section 10160 provides that a real estate salesperson's license shall remain in the possession of the licensed real estate broker employer until canceled or until the salesperson leaves the employ of the broker, and the broker shall make his license and the licenses of his salesperson available for inspection by the commissioner or his designated representative.

10. Code section 10165 provides that the commissioner may temporarily suspend or permanently revoke the license of a real estate licensee for violation of the real estate law and/or regulations.

11. Code section 10176, subdivision (e), provides that the commingling of a real estate broker's own money or property with the money or other property of others which is received and held by him or her is cause for discipline.

12. Code section 10177, subdivision (d), provides that willful disregard or violation of the real estate law or the rules and regulations of the commissioner is cause for discipline.

13. Code section 10177, subdivision (g), provides that demonstrated negligence or incompetence in performing an act which requires a real estate license is cause for discipline.

14. Code section 10177, subdivision (h) provides that when a broker licensee fails to exercise reasonable supervision over the activities of his or her salesperson, or, as the officer designated by a corporate broker licensee, fails to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required, it is cause for discipline.

15. Code section 10085 provides that the commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising, be submitted to him at least 10 calendar days before they are used. Should the commissioner determine that any such matter, when used alone or with any other matter, would tend to mislead, he or she may, within 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published. It also provides that the commissioner may determine the form or the advance fee agreements, and all material used in soliciting prospective owners and sellers shall be used in the form and manner which he or she determines is necessary.

16. California Code of regulations (CCR), title 10, section 2753, provides that the license certificate of a real estate salesperson licensee shall be retained at the main business office of the real estate broker to whom the salesperson is licensed. Upon termination of employment of the salesperson, the broker shall return the license certificate to the salesperson within three business days following the termination.

17. CCR, title 10, section 2831.1, provides that a broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank accounts and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.
(2) Amount of deposit.
(3) Date of each related disbursement.
(4) Check number of each related disbursement.
(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.
(7) Balance after posting transactions on any date.

18. CCR, title 10, section 2972 provides that each verified accounting to a principal or to the commissioner as required by Section 10146 of the Code shall include a least the following information:

(a) The name of the agent.
(b) The name of the principal.
(c) Description of the services rendered or to be rendered.
(d) Identification of the trust fund account into which the advance fee has been deposited.
(e) The amount of the advance fee collected.
(f) The amount allocated or disbursed from the advance fee for each of the following:

(1) In providing each of the services enumerated under (c) above.
(2) Commissions paid to field agents and representatives.
(3) Overhead costs and profit.

(g) In cases in which disbursements have been made for advertising, a copy of the advertisement, the name of the publication, the number of the advertisements actually published and the dates that they were carried.

(h) In the case of an advance fee for the arrangement of a loan secured by a real property or a business opportunity, a list of the names and addresses of the persons to whom information pertaining to the principal's loan requirements were submitted and the dates of the submittal.

19. Cause exists to discipline Respondent Transworld's corporate real estate license and Respondent Peltz's real estate broker license pursuant to Code section 10165, in conjunction with Code sections 10176, subdivision (e) and Code section 10177, subdivisions (d) and (g), by reason of Factual Findings 1 through 16 and Legal Conclusions 1 through 18, inclusive, in that Respondents did not have possession of all real estate salespersons licenses for Respondent Transworld's real estate salespersons in violation of Code section 10160 and CCR, title 10, section 2753; did not obtain DRE approval of the advance fee agreements in violation of Code section 10085 and CCR, title 10, section 2970; and did not maintain a trust

account and appropriate records of receipt and disbursement of advance fees and trust funds in violation of Code sections 10145 and 10146 and CCR, title 10, sections 2831.1 and 2972 (Factual Findings 1 through 16 and Legal Conclusions 1 through 18.)

20. Cause exists to discipline Respondent Peltz's real estate broker license pursuant to Code sections 10159.2 and 10177, subdivisions (d), (g) and (h). As the designated corporate broker, Respondent Peltz was responsible for the supervision and the control of the real estate activities of Respondent Transworld. Respondent Peltz failed to exercise reasonable supervision over Respondent by failing to have possession of all real estate salespersons licenses for Respondent Transworld's real estate salespersons in violation of Code section 10160 and CCR, title 10, section 2753; failing to obtain DRE approval of the advance fee agreements in violation of Code section 10085 and CCR, title 10, section 2970; and failing to maintain a trust account and appropriate records of receipt and disbursement of advance fees and trust funds in violation of Code sections 10145 and 10146 and CCR, title 10, sections 2831.1 and 2972 (Factual Findings 1 through 16 and Legal Conclusions 1 through 19.)

Disposition

21. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Respondents have demonstrated a confusion and ignorance of basic laws and practices essential to the real estate profession. While there was no actual harm to consumers, Respondents conduct nevertheless undermines public confidence in the real estate profession and as such must be remediated. Accordingly, the public will be protected by a stayed revocation of both licenses with a short suspension and an order that Respondent Peltz pass the DRE's professional responsibility examination.

Costs

22. Complainant did not offer evidence to establish the investigative and prosecution cost. Accordingly, costs of investigation and prosecution are not awarded. (Factual Finding 17.)

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ORDER

1. All licenses and licensing rights of Respondent Transworld Group Inc. under the Real Estate Law are revoked. However, the revocation is stayed and the license is suspended for a period of ten (10) days commencing on the effective date of this Decision; provided, however, that should Respondent Transworld Group, Inc. successfully petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

(A) Respondent Transworld Group, Inc. pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of $250 for each day of the suspension for a total monetary penalty of $2,500.

(B) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

(C) No further cause for disciplinary action against the real estate license of Respondent Transworld Group, Inc. occurs within one year from the effective date of the Decision in this matter.

(D) Should Respondent Transworld Group, Inc. fail 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, and in which event Respondent Transworld Group, Inc. shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

(E) Should Respondent Transworld Group, Inc. shall pay the monetary penalty and no further cause for disciplinary action against the real estate license of Respondent Transworld Group, Inc. occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

2. All licenses and licensing rights of Respondent Kenneth James Peltz under the Real Estate Law are revoked. However, the revocation is stayed and the license is suspended for a period of ten (10) days commencing the effective date of this Decision; provided, however, that should Respondent Kenneth James Peltz successfully petition, said suspension (or a portion thereof) shall be stayed upon condition that:

(A) Respondent Kenneth James Peltz pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of $250 for each day of the suspension for a total monetary penalty of $2,500.

Not Adopted

Not Adopted

(B) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

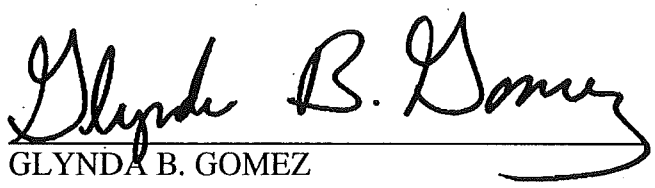
(C) No further cause for disciplinary action against the real estate license of Respondent Kenneth James Peltz occurs within one year from the effective date of the Decision in this matter.

(D) Should Respondent Kenneth James Peltz fail 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, and in which event Respondent Kenneth James Peltz shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

(E) Should Respondent Kenneth James Peltz shall pay the monetary penalty and no further cause for disciplinary action against the real estate license of Respondent Kenneth James Peltz occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

(F) Respondent Kenneth James Peltz 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. Should Respondent Kenneth James Peltz fail to satisfy this condition, the Commissioner may order suspension of Respondent James Peltz's license until he passes the examination.

Dated: May 20, 2013



GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

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FILED

APR 19 2012

DEPARTMENT OF REAL ESTATE
BY: [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of TRANSWORLD GROUP INC and KENNETH JAMES PELTZ, individually and as designated officer of Transworld Group Inc, Respondents.	No. H-38065 LA A C C U S A T I O N

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against TRANSWORLD GROUP INC and KENNETH JAMES PELTZ, individually, and as designated officer of Transworld Group Inc, alleges as follows:

1.

The Complainant, Robin Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against TRANSWORLD GROUP INC and KENNETH JAMES PELTZ, individually, and as designated officer of Transworld Group Inc.

2.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

LICENSE HISTORY

3.

A. At all times mentioned, TRANSWORLD GROUP INC ("TRANSWORLD") was licensed or had license rights issued by the Department of Real Estate ("Department") as a corporate real estate broker.

B. At all times mentioned, KENNETH JAMES PELTZ ("PELTZ") was licensed or had license rights issued by the Department as a real estate broker. From November 19, 2011 through the present, PELTZ has been the designated officer for TRANSWORLD.

C. On September 10, 1991, PELTZ signed a Stipulation and Agreement before the Department in Case No. H-24569 LA, in which PELTZ stipulated to a violation of Code Section 10137. The Stipulation and Agreement, which became effective on October 24, 1991, suspended the license and license rights of PELTZ for thirty (30) days, with ten (10) days stayed upon payment of a monetary penalty and twenty (20) more days stayed upon certain terms and conditions.

BROKERAGE

4.

At all times mentioned, TRANSWORLD and PELTZ acted as real estate brokers conducting licensed activities within the

meaning of Code Section 10131(a) and 10131(d) by selling or offering to sell real property, and by negotiating loans or performing services for borrowers in connection with loans secured directly or collaterally by liens on real property.

AUDIT

5.

On May 31, 2011, the Department completed an audit examination of the books and records of TRANSWORLD and PELTZ, pertaining to the sales and loan modification activities described in Paragraph 4 which require real estate licenses. The audit examination covered a period of time from February 1, 2008 to January 31, 2011. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and as more fully discussed in Audit Report LA10155 and the exhibits and workpapers attached to said audit report.

TRUST ACCOUNT

6.

During the audit period, TRANSWORLD did not maintain a trust account.

VIOLATIONS OF THE REAL ESTATE LAW

7.

In the course of activities described in Paragraph 4 above, and during the examination period described in Paragraph 5, TRANSWORLD and PELTZ acted in violation of the Code and the Regulations in that:

(a) TRANSWORLD commingled advance fees received from borrowers in TRANSWORLD's general account, in violation of Code Section 10176(e) and Regulation 2835.

(b) TRANSWORLD failed to keep a record of all trust funds received and disbursed for advance fees deposited in its general account, in violation of Code Section 10145 and Regulation 2831.

(c) With respect to advance fees paid into TRANSWORLD's general account, there were no separate records kept and no reconciliation with records of all trust funds received and disbursed, in violation of Code Section 10145 and Regulation 2831.2.

(d) TRANSWORLD failed to maintain a separate record for the beneficiaries of the advance fees deposited into TRANSWORLD's general account, in violation of Code Section 10145 and Regulation 2831.1.

(e) TRANSWORLD collected advance fees from borrowers and did not deposit the advance fees into a trust account, in violation of Code Section 10146.

(f) TRANSWORLD collected advance fees from borrowers in connection with loan modification transactions without submitting an advance fee agreement to the Commissioner 10 days before its use, in violation of Code Section 10085 and Regulation 2970.

(g) TRANSWORLD collected advance fees from borrowers in connection with loan modification transactions without

providing an accounting of the fees to its clients, in violation of Code Section 10146 and Regulation 2972.

(h) TRANSWORLD did not retain original salespersons' licenses at its main business office and did not make them available for inspection by the auditor, in violation of Code Section 10160 and Regulation 2753.

8.

The conduct of Respondents, as described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Section 10176(e) and Regulation 2835
7(b)	Code Section 10145 and Regulation 2831
7(c)	Code Section 10145 and Regulation 2831.2
7(d)	Code Section 10145 and Regulation 2831.1
7(e)	Code Section 10146
7(f)	Code Section 10085 and Regulation 2970
7(g)	Code Section 10146 and Regulation 2972
7(h)	Code Section 10160 and Regulation 2753

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of TRANSWORLD and PELTZ, under the provisions of Code Sections 10165, 10176(e), 10177(d) and/or 10177(g).

SUPERVISION AND COMPLIANCE

9.

The overall conduct of PELTZ constitutes a failure on his part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of TRANSWORLD as required by Code Section 10159.2, and to keep TRANSWORLD in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of PELTZ pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

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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 the license and license rights of TRANSWORLD GROUP INC and KENNETH JAMES PELTZ, individually, and as designated officer of Transworld Group Inc, under the Real Estate Law, that Complainant be awarded its costs of investigation and prosecution of this case, and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this 5 day of April, 2012.

Robin Trujillo
Deputy Real Estate Commissioner

cc: KENNETH JAMES PELTZ
TRANSWORLD GROUP INC
Robin Trujillo
Sacto
Audits