

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 16 2007

DEPARTMENT OF REAL ESTATE

By K. Contreras

* * *

In the Matter of the Accusation of)
MICHELE HANSEN,)
Respondent.)

NO. H-1975 FR
OAH NO. N-2006120295

DECISION

The Proposed Decision dated July 17, 2007, 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 September 5, 2007.

IT IS SO ORDERED 8-14, 2007.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MICHELE HANSEN,

Respondent.

Case No. H-1975-FR

OAH No. N2006120295

PROPOSED DECISION

On June 28, 2007, in Sacramento, California, Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Daniel E. Kehew, Counsel, represented the complainant.

Michael Berger and Randall L. Gephart, Attorneys at Law represented respondent.

Evidence was received. The matter was submitted and the record was closed on June 28, 2007.

FACTUAL FINDINGS

1. On August 29, 2006, Charles W. Koenig, Deputy Real Estate Commissioner of the State of California, made and filed the Accusation in his official capacity.

2. Respondent timely filed a Request for Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

3. The Department of Real Estate (Department) issued real estate salesperson license number 01117688 to respondent in August of 1991. The license is currently active.

4. In 2003, respondent's salesperson's license was registered in the employ of Mt. Morrison, Inc., doing business as RE/Max of Mammoth, in Mammoth Lakes. Between July and December 2003, respondent represented Terry Lucian in the purchase of a

residential property located at 252 Pinecrest Avenue, Mammoth Lakes, and the sale of a residential property at 141 Joaquin Road in Mammoth Lakes.

5. On July 18, 2003, Lucian listed his Joaquin Road property for sale, with respondent as his listing agent. On the same date, Lucian made an offer on the Pinecrest Avenue property. Lucian was unable to qualify for the \$385,000 loan he required to purchase the Pinecrest property. Respondent suggested to Lucian that he apply for a \$200,000 loan with CTX Mortgage. She suggested that he represent that a relative had gifted him \$185,000 toward the property purchase price. Lucian agreed. Respondent contacted two friends and she and her friends loaned Lucian \$185,000. Respondent's portion of the loan was \$50,000. Lucian signed Promissory Notes Secured by Deeds of Trust and Deeds of Trust in favor of respondent and her friends and respondent arranged to record the Deeds of Trust on the Joaquin Road property after the closing of the Pinecrest Avenue property.¹

6. On September 9, 2003, respondent prepared a form "Gift Letter" required by the lender to document the source of the \$185,000 gift to Lucian. The form stated that \$185,000 "is a gift and not to be repaid." Respondent created a fictitious donor, John Steine, and documented that Steine was Lucian's nephew. She inserted a fictitious address and phone number for Steine and signed "John Steine" on the line indicating signature of donor. Respondent inserted fictitious bank account information for Steine. Lucian submitted this fraudulent document to CTX Mortgage with his loan application. His \$200,000 loan was funded and the purchase was completed.

7. On September 12, 2003, escrow closed on the Pinecrest Avenue property. Respondent and her broker were paid a real estate commission of \$17,325. On September 12, 2003, respondent caused the Deed of Trust to be filed against the Joaquin Road property. On November 14, 2003, Lucian sold the Joaquin Road property and escrow closed. Respondent and her broker were paid a commission of \$15,250. Respondent and her friends were repaid the \$185,000 they lent to Lucian. At some point, respondent's broker discovered her fraudulent activity, reported it to the Department and terminated her from employment.²

8. Respondent explained at hearing that the real estate market in Mammoth Lakes was frenetic and encouraged her to be "in a mind set where I just wanted to get deals done." Respondent's counsel argued that the "environmental context" contributed to respondent's actions. The fact that there was money to be made by quick action in the 2003 real estate market is not mitigatory in any sense. Greed is never mitigatory.

9. Respondent also pointed out that she had only a high school education and was a waitress before beginning her real estate career twelve years ago. Respondent's lack of education is not a factor in mitigation. Respondent's fraud did not come about because of

¹ The loans bore an interest rate of 10% interest per annum and were due and payable on September 9, 2004.

² There was no evidence presented that CTX Mortgage was advised of the fraud, or that criminal action was taken against Lucian or respondent.

her lack of education. She knew her conduct was fraudulent and she engaged in a rather sophisticated scheme to disguise her fraud. Moreover, she persuaded her client and friends to participate in this fraud. Respondent was not a novice realtor at the time of her fraud. She was a seasoned realtor who knew what she was doing was fraudulent and illegal.

10. Respondent produced some evidence of rehabilitation. She has taken several real estate courses, including one on ethics and one on real estate law. She has worked as a volunteer in many community organizations. She has a stable family life. At hearing, she acknowledged her guilt and was embarrassed by it.

11. Respondent produced other evidence which she submitted as a "rehabilitation plan." After she was terminated from employment at Mt. Morrison, Inc., she worked under her mother's broker's license. Her mother was located in Irvine and she faxed her files to her mother for review. She decided that this arrangement did not provide enough oversight. She has entered into an arrangement with Roy Saari, a former coworker at Mt. Morrison Inc. Saari has a broker's license and respondent entered into a Independent Contractor Agreement (agreement) with him on October 26, 2006. Mr. Saari's wife, Sheryl Saari, also has a broker's license and she supervises respondent and reviews her files. Both Sheryl and Roy Saari testified that respondent keeps "good" files and works according to established real estate principals. They have no complaints about respondent's work and were aware of her previous fraud.

12. The agreement respondent entered into with Mr. Saari provides that respondent work from her own home office, carry all of her own insurances and expenses and submit her transactional documents to Saari within 48 hours after they are prepared, signed or received. The agreement provides that respondent receive 90 percent of commissions and Saari 10 percent. Additionally, the agreement provides that Saari is aware of the pending Department disciplinary action against respondent and agrees to supervise and monitor respondent and to assist respondent in her plan for rehabilitation and to cooperate as necessary with the Department in implementation of any rehabilitation plan. The agreement provides that respondent, upon execution of the agreement, pay into Saari's brokerage account the sum of \$30,000. This amount is to be regarded as a deposit and Saari may draw from it to pay costs and expenses incurred by him in connection with the agreement. Only Saari and his counsel have signing rights over the deposit.³ The agreement also states:

"It is contemplated and agreed that Broker will be entitled to and shall withdraw immediately upon execution of the agreement ...the sum of \$5,000. It is contemplated that Broker will be reimbursed for time expended in connection with DRE proceedings pending against Hansen at the rate of \$150 per hour. Broker will also be reimbursed for any actual expenses incurred, including travel or other incidental expenses incurred in connection with the DRE matter. Hansen shall be responsible for her own expenses and costs of doing business, including any E&O

³ Randall Gephart is Saari's counsel and the second signatory on the deposit account. He also represents respondent in this proceeding.

coverage applicable to her transactions, supplies, advertising, worker's compensation premiums, legal expenses, continuing education, and accounting expenses, including preparation of Forms 1099 for Mammoth Lakes Real Estate."

The agreement provides that Saari will draw his 10 percent share of commissions from the deposit until the funds are exhausted and that in the event the agreement is terminated by Hansen or at her direction for any reason, and without the consent of Broker, any unused or uncredited portion of the Deposit shall be released to Broker for all purposes.

13. In essence, under this agreement, respondent is paying Saari \$5,000 for the privilege of working under his broker's license. Additionally, she is obligated to pay him at a rate of \$125 per hour plus expenses for his attendance at the hearing and his testimony on her behalf. If the Department requires her to practice under enhanced supervision, she is obligated to pay Saari \$125 per hour plus expenses for this supervision. Moreover, Saari is entitled to keep any remaining balance in the event respondent loses her salesperson's license.

Complainant argues that the agreement amounts to an employment contract. Respondent has, in effect, employed Saari to act as her broker. Complainant's point is well taken. Saari's interest in respondent's rehabilitation and his ability to monitor and judge her performance are colored by this fiduciary arrangement. Moreover, Saari has already delegated his supervisory responsibilities as a broker to his wife, who operates under a separate brokerage license.

14. Respondent produced only the Saaris as witnesses. She did not produce substantial evidence of rehabilitation, despite the fact that almost four years have elapsed since her fraud. She blames the real estate environment and her own naiveté for her frauds. She claims no one was injured by her actions, even though she acknowledges that lenders would not have loaned Lucian \$200,000 or loaned him this sum at the interest he obtained. She has not notified the lender of her fraud. She has not disgorged the profits she made on the two Lucian transactions, or the interest she made on the loan to Lucian. She has not made amends with the broker whose license she endangered in her fraud.

LEGAL CONCLUSIONS

1. As set forth in the Factual Findings 1 through 8, the Board established cause, by clear and convincing evidence, for discipline of respondent's real estate salesperson license and all licensing rights, pursuant to Business and Professions Code section 10176, subdivisions (a) and (i), individually and jointly. Those sections provide:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any

time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

¶...¶

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

2. As set forth in the Factual Findings 1 through 8, the Board established cause, by clear and convincing evidence, for discipline of respondent's real estate salesperson license and all licensing rights, pursuant to Business and Professions Code section 10177, subdivisions (d) and (j), individually and jointly. Those sections provide:

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

¶...¶

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

¶...¶

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

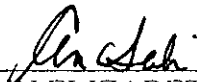
3. The purpose of regulatory statutes is not to punish, but to protect members of the public when they deal with licensees. (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027.) Respondent's conduct was egregious. She used her real estate salesperson's licensure to commit a fraud upon a lender. Moreover, she involved others in her scheme. Her motivation was greed. She has shown that she can not be trusted with the fiduciary responsibilities a real estate licensee owes to the public. Respondent has had four years to show that she has understood her offense and her motivation, and to assure the Department that she no longer poses a risk to the public. The mere passage of time without further incident is not rehabilitation, particularly when disciplinary proceedings are ongoing. Respondent

has failed to demonstrate rehabilitation from her very serious breach of public duty.
She continues to pose a risk to the public.

ORDER

Real Estate Salesperson License number 01117688, issued to Michele Hansen and all
licensing rights under Real Estate Law are REVOKED.

Dated: July 17, 2007



ANN ELIZABETH. SARLI
Administrative Law Judge
Office of Administrative Hearings

1 DANIEL E. KEHEW, Counsel (SBN 231550)
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DEPARTMENT OF REAL ESTATE

By *K. Contreras*

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MICHELE HANSEN,) H-1975 FR
13 Respondent.) ACCUSATION
14 _____)

15 The Complainant, CHARLES W. KOENIG, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against MICHELE HANSEN, is informed and alleges as
18 follows:

19 I

20 MICHELE HANSEN (hereinafter "Respondent") is presently
21 licensed and/or has license rights under the Real Estate Law,
22 Part 1 of Division 4 of the California Business and Professions
23 Code (hereafter "Code") as a real estate salesperson.

24 II

25 The Complainant, CHARLES W. KOENIG, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation
27 against Respondent in his official capacity and not otherwise.

1 III

2 Within the past three years, Respondent was employed by
3 or associated with California real estate broker/corporation Mt.
4 Morrison Inc., doing business as RE/Max of Mammoth, in Mammoth
5 Lakes, California.

6 IV

7 Within the three year period preceding the filing of
8 this Accusation and at all times herein mentioned, Respondent
9 engaged in the business of, acted in the capacity of, advertised,
10 or assumed to act as a real estate salesperson within the State
11 of California within the meaning of Section 10132 of the Code.

12 V

13 From in or about July, 2003, to December, 2003,
14 Respondent represented client Terry Lucian (hereinafter "Lucian")
15 in the purchase of a residential property located at 252
16 Pinecrest Avenue, Mammoth Lakes, California (hereinafter
17 "Pinecrest property") and the sale of a residential property
18 located at 141 Joaquin Road, Mammoth Lakes, California
19 (hereinafter "Joaquin property").

20 VI

21 In or about August and September, 2003, Respondent
22 knowingly and actively participated in a fraud to induce CTX
23 Mortgage to issue a mortgage to Lucian on the Pinecrest property
24 in the amount of \$200,000.00, to wit: Respondent directed, induced,
25 and/or assisted Lucian in presenting CTX Mortgage with a mortgage
26 loan application that includes a documented representation by
27 Lucian that he had received \$185,000.00 as a gift.

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VII

The \$185,000.00 amount described in paragraph VI was not a gift received by Lucian, but rather funds borrowed by Lucian from private individuals, including \$50,000.00 from Respondent and her husband.

VIII

CTX Mortgage relied, in fact, on the representation described in paragraph VI, above, in its agreement to make a \$200,000.00 mortgage loan to Lucian for the Pinecrest property purchase.

IX

Had CTX Mortgage been aware of the true facts, it would not have agreed to have made the \$200,000.00 mortgage loan to Lucian for the Pinecrest property purchase on the same terms and conditions.

X

By reason of the facts alleged above, Respondent has committed acts and/or omissions that constitute misrepresentation, fraud, and/or dishonest dealing, and which constitute grounds for the suspension or revocation of Respondent's real estate license and license rights under the provisions of Sections 10176(a), 10176(i), 10177(d), and/or 10177(j) of the Code.

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 license and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business

1 and Professions Code), and for such other and further relief as
2 may be proper under other provisions of law.

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6 
7 CHARLES W. KOENIG
8 Deputy Real Estate Commissioner

9
10 Dated at Sacramento, California
11 this 29th day of August, 2006.