

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

APR 28 2010

DEPARTMENT OF REAL ESTATE

K. Max

In the Matter of the Accusation of)
)
)
 ERIC N. FERDINANDSEN,)
)
) Respondent.)
_____)

NO. H-2424 FR
OAH NO. 2009110437

DECISION

The Proposed Decision dated March 31, 2010, 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.

Pursuant to Section 11517(b)(3) of the Government Code, the following correction is made:

On page 1, number 3 of the Factual Findings of the Proposed Decision should be amended in part to:

“3. Respondent stipulated to the surrender of his Real Estate Appraiser License (No. AG010169) issued by the California Office of Real Estate Appraisers. The effective date of the surrender order issued by the Director of the Office of Real Estate Appraisers was November 27, 2008. The surrender was based on....”

The Decision suspends or revokes the real estate license and/or license rights.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

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

MAY 20 2010

IT IS SO ORDERED 4-28-10

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ERIC N. FERDINANDSEN,

Respondent.

Case No. H-2424 FR

OAH No. 2009110437

PROPOSED DECISION

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on March 1, 2010.

John W. Barron, Counsel, Department of Real Estate, represented the complainant.

Respondent Eric N. Ferdinandsen appeared and represented himself.

Evidence was received and the matter was submitted on March 1, 2010.

FACTUAL FINDINGS

1. John W. Sweeney, a Deputy Real Estate Commissioner, Department of Real Estate, State of California, filed the Accusation against respondent in Sweeney's official capacity.

2. Respondent is presently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate broker.

3. Respondent stipulated to the surrender of his Real Estate Appraiser License (No. AG010169) issued by the California Office of Real Estate Appraisers. The effective date of the surrender order issued by the Director of the Office of Real Estate Appraisers was November 27, 2007. The surrender was based on a stipulation by which respondent admitted all allegations against him and agreed to the surrender of his appraiser license. By the terms of the stipulation, respondent's admissions could be used in proceedings in which any "other professional licensing agency is involved." Respondent admitted to a misleading overvaluation of a single family residence, using improper comparables and failing to account for an almost 60 percent increase in market value of the house in question over a three month period in late 2005. Thereafter, the lender foreclosed on the property and listed it for almost \$200,000 less than the market value of \$750,000 respondent gave the property.

Respondent also admitted that on eight other occasions in 2004, he falsely certified that he had personally inspected the interiors of houses for which he provided appraisals. In fact, only an appraisal trainee had performed interior inspections of the properties. Respondent also agreed to pay approximately \$11,000 in enforcement costs to the California Office of Real Estate Appraisers, although approximately \$9,000 is payable only if respondent files a new application for real estate appraisal license, which he must do if he wishes to once again be a real estate appraiser in the State of California.

4. At hearing, respondent essentially blamed his troubles with the California Office of Real Estate Appraisers on an appraisal trainee who performed the field work on eight of the properties. Respondent testified that the trainee performed the appraisals without respondent's knowledge and approval, and when respondent learned that the trainee had done so, respondent had to hurriedly inspect the properties to try and legitimize the appraisal reports. Respondent asserted that the trainee was unhappy with respondent for having reduced the hours claimed by the trainee as experience toward the trainee's acquisition of his own appraisal license. However, the evidence included the investigation report by the Office of Real Estate Appraisers and recited the conversations between an investigator and respondent about each of the properties in question. Respondent never mentioned any unauthorized appraisals by the trainee and, in essence, simply admitted that he had not inspected the interiors of the eight properties. Respondent's explanations for the overvalued house were full of inconsistencies and assertions about information relied upon which he did not produce for the review by the investigator. In summary, respondent's testimony was not credible and his lack of candor was a significant factor in the recommended penalty in this matter.

5. Respondent has been a licensed real estate broker since 1989. For a period of time some years ago, he was involved in the mortgage broker business providing financing secured by real estate. Respondent has also been a licensed general and electrical contractor. For more than 50 years, respondent has been a real estate appraiser. For the last approximately 36 years, he has been an independent real estate appraiser in Fresno, California. Respondent has vast experience appraising residential and commercial properties, including master appraisals for construction projects. Respondent has been a certified HUD Fee appraiser, a VA Fee Appraiser, an FHA/HUD 203(K) consultant, and an expert witness in federal Bankruptcy Court.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivisions (f) and (j), read:

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:

[¶] . . . [¶]

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

[¶] . . . [¶]

(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. Cause for discipline of respondent's real estate broker's license was established for violation of Business and Professions Code sections 10177, subdivisions (f) and (J), by reason of Factual Findings 3 and 4. Respondent admitted that he certified misleading appraisal reports including the overvaluation of one property and false representations concerning his personal inspection of the interiors of eight properties. Respondent has therefore engaged in conduct which constitutes fraud and dishonest dealing, an express ground for disciplining respondent's real estate broker's license.¹ Department counsel referenced California Code of Regulations, title 10, section 2910, which defines the criteria by which one determines whether an act or crime is substantially related to the qualifications,

¹ Respondent was disciplined by the Office of Real Estate Appraisers for an act which would constitute grounds for discipline of a real estate license. However, respondent surrendered his appraiser license and Business and Professions Code section 10177, subdivision (f), authorizes the Real Estate Commissioner to discipline a real estate licensee based on discipline by another licensing entity only if the license issued by another agency was "revoked or suspended."

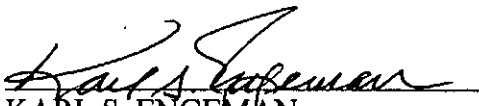
duties and functions of real estate licensee. However the criteria relate to the denial of a license based on dishonest conduct (and other grounds).²

4. Respondent has a long and distinguished career as an independent real estate appraiser. However, rather than acknowledging the misconduct as reflected in the order by which respondent surrendered his real estate appraiser's license, respondent chose to try to deflect blame onto a trainee appraiser whom he accused of conducting unauthorized appraisals. This account was directly at odds with the versions of the events recounted by respondent to an investigator of the Office of Real Estate Appraisers. Thus, no credible evidence of mitigation or rehabilitation was provided by respondent, and the only reasonable sanction in this matter is the revocation of respondent's real estate broker's license.

ORDER

All licenses and licensing rights of respondent Eric N. Ferdinandsen under the Real Estate Law are revoked.

Dated: March 31, 2010


KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings

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² Department Counsel also cited California Code of Regulations, title 10, section 2911 criteria for rehabilitation, but those criteria deal with license denial, and section 2912, while related to discipline of an existing license, is limited to discipline based on a criminal conviction.

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FILED

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DEPARTMENT OF REAL ESTATE

By H. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 ***

11 In the Matter of the Accusation of)
12) NO. H-2424 FR
13 ERIC N. FERDINANDSEN,) ACCUSATION
14 Respondent.)
15)

16 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate Commissioner
17 of the State of California, for cause of Accusation against ERIC N. FERDINANDSEN,
18 (hereinafter "Respondent"), is informed and alleges as follows:

19 1

20 The Complainant makes this Accusation against Respondent in his official
21 capacity.

22 2

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

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27 ///


On or about September 15, 2008, a Stipulated Surrender of License and Order was entered into by Respondent and the Office of Real Estate Appraisers, Real Estate Appraisers of the State of California, in which Respondent surrendered his Real Estate Appraiser License (No. AG010169) in Cases Nos. C 060421-09 and C 060719-01/OAH No. 2008060913. The Stipulated Surrender of License and Order was based on Respondent's violation of Uniform Standards of Professional Appraisal Practice Standards Rules (hereafter "S.R.") 1-2(e)(i) and 2-2(b)(iii) (Failure to Accurately Report Characteristics of Property); S.R. 1-4(a) and 2-2(b)(ix) (Failure to Properly Collect, Verify and Analyze Comparable Sales Data); S.R. 1-5(a) and 2-2(b)(ix) (Failure to Report and Analyze All Listings of Property); S.R. 1-5(b) (Failure to Properly Analyze All Sales of Property); S.R. 1-1(b), 1-2(f), 2-2(b)(vii) and 2-3 (Failure to Identify Scope of Work Necessary to Complete Assignment); S.R. 1-1(a) (Failure to Correctly Employ Recognized Methods/Techniques Necessary to Produce Credible Appraisal Report); S.R. 1-1(b) (Substantial Errors of Omission or Commission Affecting Appraisal); S.R. 2-1(b) (Insufficient Information in Appraisal Report); S.R. 1-1(b), 1-2(f), 2-2(b)(vii) and 2-3 (False Certification); S.R. 2-1(a) (Misleading Appraisal Report – Eight Counts); S.R. 1-1(b), 1-2(f), 2-2(b)(vii) and 2-3 (False Certification – Seven Counts); Conduct Section of the Ethics Rule, and Recordkeeping Section of the Ethics Rule. On or about September 25, 2008, a Decision and Order adopting the Stipulated Surrender of License and Order was issued by the Director of the Office of Real Estate Appraisers, Office of Real Estate Appraisers of the State of California. On or about October 28, 2008, a Revised Decision and Order adopting the Stipulated Surrender of License and Order was issued by the Director of the Office of Real Estate Appraisers. The Revised Decision and Order became effective November 27, 2008.

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Respondent's acts, which resulted in the proceedings described in Paragraph 3, above, are acts, which if done by a real estate licensee, would be grounds for suspension or revocation of his California Real Estate License.

The facts alleged in Paragraph 3, above, constitute a cause under Section 10177(f) of the Code for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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 under the Code, and for such other and further relief as may be proper under the provisions of law.


JOHN W. SWEENEY
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 15th day of October, 2009.