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JAN 12 2015

BUREAU OF REAL ESTATE

By L. Frost

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

ASSOCIATES LAND COMPANY, INC.,
a California Corporation, and
JANET YVONNE REID-BILLS,

Respondents.

CALBRE No. H-2561 FR

OAH No. 2011120642

DECISION AFTER REJECTION

This matter came on for hearing before Marilyn A. Woollard, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on October 22, 2012, March 18, and July 25, 2013; and in Fresno, California, on February 27, and 28, 2014.

On October 22, 2012, Real Estate Counsel Michael B. Rich represented Complainant Luke Martin, in his official capacity as a Deputy Real Estate Commissioner with the Department¹ of Real Estate (hereinafter "the Bureau"). On all subsequent hearing dates,

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¹ Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate under the Department of Consumer Affairs pursuant to the Governor's Reorganization Plan of 2012.

1 Real Estate Counsel Jason D. Lazark represented the Complainant for the Bureau¹. Respondent
2 JANET YVONNE REID-BILLS represented herself and Respondent ASSOCIATES LAND
3 COMPANY, INC. (collectively referred to herein as "Respondents").

4 Oral and documentary evidence was received, and at the conclusion of the last
5 hearing date the record remained open for the parties to submit written closing arguments.
6 Complainant submitted written closing argument on April 1, 2014. Respondents submitted
7 written closing argument on April 16, 2014. Complainant submitted a reply closing brief on
8 April 22, 2014. The record was closed and the matter was submitted for decision on April 22,
9 2014.

10 On May 20, 2014, the Administrative Law Judge rendered a Proposed Decision
11 (hereinafter "the Proposed Decision") which the Real Estate Commissioner declined to adopt
12 as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of
13 California, Respondents were served with notice of the Real Estate Commissioner's
14 determination not to adopt the Proposed Decision along with a copy of the Proposed Decision.
15 Respondents were notified that the case would be decided by the Real Estate Commissioner
16 upon the record, the transcripts of the proceedings, and upon written argument offered by
17 Respondents and Complainant.

18 Written argument was submitted by Respondents on October 30, 2014, and by
19 Complainant on November 21, 2014.

20 The following shall constitute the Decision of the Real Estate Commissioner in
21 these proceedings.

22 The Findings of Fact and Legal Conclusions of the Proposed Decision dated May
23 20, 2014 (hereinafter "the Proposed Decision") are adopted in full as part of this Decision.

24 Pursuant to Section 11517(c)(2)(E) of the California Government Code, the Order
25 in the Proposed Decision is hereby amended as follows:
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27 ¹ All references to the Bureau include actions taken by its predecessor, the Department of Real Estate. (Bus. and Prof. Code § 10005)

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1 3. Respondent shall, within nine (9) months from the effective date of
2 this Decision, present evidence satisfactory to the Commissioner that Respondent has,
3 since the most recent issuance of an original or renewal real estate license, taken and
4 successfully completed the continuing education requirements of Article 2.5 of Chapter 3
5 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy
6 this condition, Respondent's real estate license shall automatically be suspended until
7 Respondent presents evidence satisfactory to the Commissioner of having taken and
8 successfully completed the continuing education requirements. Proof of completion of the
9 continuing education courses must be delivered to the Bureau of Real Estate, Flag Section
10 at P.O. Box 137013, Sacramento, CA 95813-7013.

11 4. Respondent shall, within six (6) months from the effective date of
12 this Decision, take and pass the Professional Responsibility Examination administered by
13 the Bureau including the payment of the appropriate examination fee. If Respondent fails
14 to satisfy this condition, Respondent's real estate license shall automatically be suspended
15 until Respondent passes the examination.

16 5. Respondent shall report in writing to the Bureau of Real Estate as the
17 Real Estate Commissioner shall direct by his Decision herein or by separate written order
18 issued while the restricted license is in effect such information concerning Respondent's
19 activities for which a real estate license is required as the Commissioner shall deem to be
20 appropriate to protect the public interest. Such reports may include, but shall not be
21 limited to, periodic independent accountings of trust funds in the custody and control of
22 Respondent and periodic summaries of salient information concerning each real estate
23 transaction in which the Respondent engaged during the period covered by the report.

24 6. During the period of the restricted license, Respondent shall not
25 serve as the designated officer for any other licensee.

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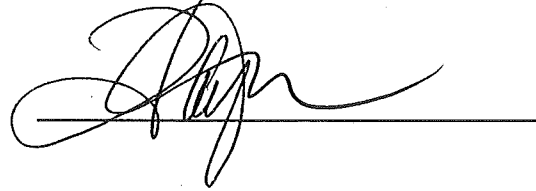
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This Decision shall become effective at 12 o'clock noon on **FEB 02 2015**.

IT IS SO ORDERED

1/5/2015

REAL ESTATE COMMISSIONER

A handwritten signature in black ink, appearing to be "D. J. [unclear]", is written over a horizontal line.

FILED

JUL 03 2014

BUREAU OF REAL ESTATE

By *L. Frost*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of	)	No. H-2561 FR
	)	
ASSOCIATES LAND COMPANY, INC. and	)	OAH No. 2011120642
JANET YVONNE REID-BILLS,	)	
	)	
Respondents.	)	

NOTICE

TO: ASSOCIATES LAND COMPANY, INC. and JANET YVONNE REID-BILLS, Respondents.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated May 20, 2014, 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, 2014, 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 October 22, 2012, March 18, 2013,, July 25, 2013, February 27, 2014, and February 28, 2014, 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 October 22, 2012, March 18,

1 2013,, July 25, 2013, February 27, 2014, and February 28, 2014, at the Sacramento office of the
2 Bureau of Real Estate unless an extension of the time is granted for good cause shown.

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

6 DATED: 6/23/2014

7 REAL ESTATE COMMISSIONER

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10 WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ASSOCIATES LAND COMPANY,
INC., a California Corporation, and
JANET YVONNE REID-BILLS,

Respondents.

Case No. H-2561-FR

OAH No. 2011120642

PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on October 22, 2012, March 18, and July 25, 2013; and in Fresno, California, on February 27; and 28, 2014.

On October 22, 2012, Real Estate Counsel Michael B. Rich represented complainant Luke Martin, in his official capacity as a Deputy Real Estate Commissioner with the then-Department of Real Estate. On all subsequent dates, Real Estate Counsel Jason D. Lazark represented complainant for the Bureau of Real Estate (Bureau), Department of Consumer Affairs.¹

Respondent Janet Yvonne Reid-Bills (Ms. Reid-Bills) appeared on behalf of herself and respondent Associates Land Company, Inc. (Associates).

Oral and documentary evidence was received. At the conclusion of the hearing, the record remained open for written closing arguments.

On April 1, 2014, OAH received complainant's closing brief, which was marked for identification as Exhibit 20. On April 16, 2014, OAH received respondents' closing brief, which was marked for identification as Exhibit P. On April 22, 2014, OAH received complainant's reply brief, which was marked for identification as Exhibit 21.

¹ All references to the Bureau include actions taken by its predecessor, the Department of Real Estate. (Bus. & Prof. Code, § 10005.)

The record was then closed and the matter was submitted for decision on April 22, 2014.

FACTUAL FINDINGS

1. *Respondent Reid-Bills:* On June 8, 1993, the Bureau issued a real estate salesperson license number 01161079 to Ms. Reid-Bills. On July 8, 2004, the Bureau issued a real estate broker license B/01161079 to Ms. Reid-Bills. This license is current and will expire on July 8, 2016, unless it is renewed, revoked or surrendered.

As indicated in Finding 2, Ms. Reid-Bills was the designated officer for Associates from December 15, 2004, until the expiration of Associates' license and related officer designation on March 29, 2011. The Bureau has never issued a real estate broker license to Ms. Reid-Bills to operate under any fictitious business name.

2. *Respondent Associates:* Associates is a domestic corporation registered with the California Secretary of State (file number C2495524), with a formation date of January 27, 2003.

On March 24, 2003, the Bureau issued a corporation real estate license, C/01377894, to Associates, doing business as (dba) Help-U-Sell Associates Realty (Help-U-Sell). Originally, Associates' designated corporate officer was David Paul Poague. Effective December 15, 2004, Ms. Reid-Bills replaced Mr. Poague as Associate's designated officer.

On March 29, 2011, Associates' real estate license expired; its dba as Help-U-Sell and officer designation were also cancelled as of that date.

3. *Accusation:* On December 2, 2010, complainant filed the Accusation and alleged that respondents were alter egos for each other, had acted as real estate brokers within the meaning of Business and Professions Code section 10131, subdivision (a), and had violated the Real Estate Law, Business and Professions Code section 10000, et seq.² Complainant further alleged that, as Associates' designated broker officer, Ms. Reid-Bills was responsible for Associates' actions; that she failed to exercise reasonable supervision and control over Associates' real estate sale activities; and that she "permitted, ratified,

² Unless indicated otherwise, all undesignated statutory references are to the Business and Professions Code.

In pertinent part, 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, does or negotiates to do one or more of the following acts for another or others: (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity. . . ."

and/or caused the conduct alleged" below. At the time the Accusation was filed, Associates' corporate real estate license was current. The subsequent expiration of Associates' real estate license and the related officer designation does not affect the Bureau's jurisdiction to proceed with this disciplinary action. (§ 10103.)

Complainant outlined five causes for the suspension or revocation of respondents' licenses and licensing rights, based on their alleged violations of sections 10159.1, 10162, 10165 and 10177, subdivisions (d), (g), and (h); California Civil Code sections 2079, 2079.2, 1102.1, 1102.6; and California Code of Regulations, title 10 (10 CCR), sections 2725, 2742, subdivision (c), and 2715. The specific grounds for discipline are described below.

4. *Notice of Defense:* On December 16, 2010, the Bureau received Ms. Reid-Bills' notice of defense. Thereafter, 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.

5. At the hearing on October 22, 2012, Ms. Reid-Bills indicated she was appearing on behalf of herself and Associates. Complainant called the following witnesses: Bureau special investigator Kimberly Rae Kesterson and licensed real estate salespersons Oscar Ramos, Annilee Maude Meyer, James Wei-Kung Liang, Juan Leonardo Estrada, Barry Richard Wooten, and Juanita Bucio. No evidence was presented at the March 18, and July 25, 2013 hearings, which resulted in continuances.

At the hearing on February 27, and 28, 2014, Ms. Kesterson, now a former Bureau employee, completed her testimony. Respondents called the following witnesses: Bureau special investigator Winston Horn, complainant Luke Martin, licensed real estate broker Julie Kaley, Ms. Reid-Bills' mother and former employee Mae Alene Reid, and Ms. Reid-Bills. In her argument and witness examinations, Ms. Reid-Bills sought, *inter alia*, to establish that the Bureau's Fresno office had acted inappropriately in its investigation of this case; that it should not have pursued the Accusation; that the Bureau had not followed its own complaint investigation procedures; and that Ms. Kesterson had acted outside the scope of her duties as a special investigator. Relevance objections to these lines of questioning were sustained.

Acting as a Real Estate Broker while Corporate Status Was Suspended

6. Complainant alleged that Associates continued to engage in business as a real estate broker while it was no longer in good standing with Secretary of State (Secretary), and that this was a willful disregard or violation of the Real Estate Law. (§ 10177, subd. (d); 10 CCR § 2742, subd. (c).) Specifically, complainant asserted that after its suspension by the Secretary, Associates, through the solicitation and negotiation of Ms. Reid-Bills, entered into listing agreements with sellers to market and sell their real property, solicited buyers, and/or negotiated the sale of real properties on behalf of sellers, in the transactions described in Factual

Findings 11 through 13, below.³ Complainant asserted that, as Associates' designated officer, Ms. Reid-Bills was responsible for this conduct.

7. *Corporate Suspension:* On March 6, 2009, the Secretary suspended Associates' corporate registration and all of its "powers, rights and privileges" under the California Corporations Code. No evidence was provided regarding the basis for this suspension.

8. As a special investigator (formerly deputy commissioner) with the Bureau's Fresno office, Ms. Kesterson investigated consumer complaints into licensed and unlicensed real estate activities.

In December 2009, as part of an investigation, Ms. Kesterson checked the status of both respondents' real estate licenses on the Bureau's website. She then checked Associates' status on the Secretary's website and learned that the Secretary had suspended Associates' corporate status on March 6, 2009. Associates' suspended status was posted on the Secretary's website. The website also listed Associates' address as 8945 North Chestnut, Fresno, and its agent for service of process as Ms. Reid-Bills at the same address. These facts were reflected in the December 23, 2009, screen shot Ms. Kesterson printed from the Secretary's website. Ms. Kesterson found no indication that Ms. Reid-Bills had notified the Bureau of Associates' corporate suspension.

9. "A corporation licensed under Section 10211 of the Code shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State." (10 CCR, § 2742 (c).) It is undisputed that Associates was no longer in good standing with the Secretary of State effective March 6, 2009, based upon the suspension of its corporate status. Associates' real estate broker license, and its related Help-U-Sell dba, was active for nearly two years after its suspension by the Secretary.

10. "No acts for which a real estate license is required may be performed for, or in the name of, a corporation when there is no officer of the corporation licensed under Section 10158 or 10211." (10 CCR, § 2740.)⁴ The officer designated by a corporate broker licensee "shall be responsible for the supervision and control of the activities conducted on behalf of

³ A 'listing' is "a written contract between an owner of property and an agent by which the agent has been authorized to sell the property or to find or obtain a buyer." "A 'listing agent' is one who has obtained a listing of property of the kind in respect of which he or she is authorized by law to act as an agent for compensation." (Civ. Code, §1086, subds. (f) and (g); see also, Civil Code § 2079.13, subds. (e) and (f).)

⁴ Section 10211 provides, in pertinent part, that "[i]f the licensee is a corporation, the license issued to it entitles one officer thereof, on behalf of the corporation, to engage in the business of real estate broker without the payment of any further fee, such officer to be designated in the application of the corporation for a license. . ." If the corporate licensee wants any additional officers "to act under its license as a real estate broker," it must obtain an additional license. (§ 10158.)

the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.” (§ 10159.2, subd. (a).)

11. In January 2010, Ms. Kesterson obtained listing information from the Fresno Association of Realtors that showed Help-U-Sell as the Listing Office, with Ms. Reid-Bills as the listing agent, for numerous real estate owned/“REO”- Bank Owned properties, on dates after the Secretary’s suspension of Associates. These listings included the following:

Property	Listing Date	Expiration Date	Sale/Close Date
3143 Burgan Ave., Clovis	12/23/08	3/15/09	4/1/09
17440 McRae Rd., Madera	9/12/08	5/13/09	3/12/09
49750 Pierce Dr., Oakhurst	3/20/09	6/20/09	6/24/09
4783 Hamilton Ave., Fresno	2/26/09	5/26/09	6/5/09
1835 Mayfair Dr. E., Fresno	4/24/09	7/24/09	5/21/09
1448 E. Sample Ave., Fresno	5/6/09	8/15/09	6/12/09
7307 N. 4th Street, Fresno	5/12/09	8/12/09	6/26/09
1942 E. Richmond Ave., Fresno	7/16/09	10/16/09	9/30/09
2968 E. Richmond Ave., Fresno	3/25/09	6/25/09	4/24/09
6330 E. Platt Ave., Fresno	6/17/09	9/17/09	9/03/09

12. In her September 30, 2010 Case Analysis report, Ms. Kesterson indicated that, according to the Fresno Association of Realtors, respondents had approximately 32 properties listed for sale under the Help-U-Sell dba between March 6, 2009, and January 29, 2010. Of these, approximately 13 were listed after the date of Associates’ suspension. The other properties were listed by Help-U-Sell “prior to the suspension date, but were continued to be marketed and sold after the suspension date. Approximately 27 of these properties sold after March 6, 2009.”

13. Ms. Kesterson also obtained buyers’ contracts and brokers’ transactional files on seven properties in Fresno, California. These documents showed that, after Associates’ corporate suspension, Ms. Reid-Bills continued to conduct real estate activities under

Associates' dba as "Help-U-Sell." These properties are listed below and their transactions are further described in Factual Findings 26 through 32.

Property	Seller	Buyer	Offer Date	Close Date
2314 S. Holly Ave.	Atlantic Pacific REO Resolutions & Management	Cesar G. Artega	2/19/09	3/16/09
1375 N. College Ave.	Aurora Loan Services LLC	Lee & Judith Ward	3/17/09	4/24/09
2119 W. Fir Ave.	GRP Loan LLC	James Cagle	8/14/09	10/22/09
1942 E. Richmond	Aurora Loan Services LLC	D. Kulibert & Y. Chi	7/25/09	9/30/09
1448 E. Sample Ave.	Deutsche Bank Natl. Trust Co.	Clara S. Johnson	5/8/09	6/12/09
7307 - 4th Street	Wells Fargo, NA	R. L. Durst	5/18/09	6/26/09
10581 Oak Hill Cir.	Horizons Home Loan Corp.	David E. Musson	9/9/09	10/22/09

14. Contrary to respondents' argument, Ms. Kesterson was under no obligation to inform respondents that Associates' corporate status was suspended. Even assuming such an obligation existed, the Bureau, through Ms. Kesterson, did not learn of the suspension until after the transactions set forth above. As the designated officer for Associates, Ms. Reid-Bills was responsible for maintaining Associates' corporation status in good standing with the Secretary of State, and for notifying the Bureau of any lapse in such status. She failed to do so.

Ms. Reid-Bills' assertion that she did not "willfully" disregard the law because she was not aware of Associates' suspension by the Secretary of State is not persuasive. Neither the Bureau nor the Secretary was under any obligation to notify respondents of the lapse in Associates' good corporate standing to ensure that it remained in good standing. To the contrary, as Associates' designated officer, Ms. Reid-Bills had an absolute duty to proactively ensure that the corporation was and remained in good standing with the Secretary and therefore with the Bureau. She failed to exercise any due diligence to ensure compliance with the law. The term 'willfully' as used in section 10177, subdivision (d), "does not require an intent to violate the law." All that is required is an intent to engage in the act or conduct prohibited by the statute, or to fail to engage in conduct required by the Real Estate Law. (*Milner v. Fox* (1980) 102 Cal.App.3d 567, 574.)

Abandonment of Main Offices; Failure to Maintain Current Addresses with the Bureau

15. Complainant alleged that during the three-year period before the Accusation was filed, including in approximately October 2009, respondents each abandoned their main office addresses on file with the Real Estate Commissioner (Commissioner) and thereafter failed to maintain a current business address with the Bureau.

16. Under the Real Estate Law, "Every licensed real estate broker shall have and maintain a definite place of business in the State of California which shall serve as his office for the transaction of business. This office shall be the place where his license is displayed and where personal consultations with clients are held." (§ 10162.) In addition, "No real estate license authorizes the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8." (*Ibid.*)

The regulations implementing the Real Estate Law require brokers to maintain current business addresses with the Commissioner. "Every broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his principal place of business for brokerage activities, the address of each branch business office and his current mailing address, if different from the business address. . ." (10 CCR § 2715.) Prompt notification of change is required. "... Whenever there is a change in the location or address of the principal place of business or of a branch office of a broker, he shall notify the commissioner thereof not later than the next business day following the change." (*Ibid.*)

17. *Respondent Reid-Bills*: As of January 1, 2007, Ms. Reid-Bills' main office address on file with the Bureau, in her capacity as an individual broker, was 8945 North Chestnut Avenue, Fresno, 93720, with a mailing address of 1683 East Gatwick Lane, Fresno, 93730. As of July 9, 2008, her main office address was changed to 8497 North Millbrook Avenue, #104, Fresno, 93720.⁵ This remained Ms. Reid-Bills' address of record with the Bureau until July 9, 2012, when she changed it to 1683 East Gatwick Lane, Fresno, 93730.

18. *Respondent Associates*: On December 15, 2004, when Ms. Reid-Bills became its designated officer, Associates changed its main and mailing address with the Bureau to 8945 North Chestnut Avenue, Fresno, California 93720, the same address on file with the Secretary. This address of record remained unchanged in the Bureau's records until Associates' corporate license expired on March 29, 2011.

19. *Testimony and Declaration of Ms. Kesterson*: Ms. Kesterson first became aware of issues regarding respondents' office addresses on March 22, 2010, when she attempted to serve Ms. Reid-Bills with a subpoena duces tecum (SDT) requesting copies of transactional files and listing agreements. To do so, Ms. Kesterson first drove to 8945 North Chestnut Avenue, Associates' address of record. Once there, Ms. Kesterson noted that the

⁵ On February 28, 2014, the Accusation was verbally amended, on page 7, line 19, to eliminate "8947" and to replace it with "8497."

door was locked. Looking through the window, she could see that the office was empty and abandoned. Ms. Kesterson then traveled to Ms. Reid-Bills address of record, at 8497 North Millbrook Avenue, #104. This office was also abandoned. It was empty and there was no business labeling on the glass door. Ms. Kesterson then traveled to Ms. Reid-Bills' mailing address of record with the Bureau, at 1683 East Gatwick Lane. This was a single family home in a gated residential neighborhood. Several cars were present, but no one answered the door. Ms. Kesterson obtained the license numbers of the vehicles parked at this address and verified that this was Ms. Reid-Bills' residence through the Department of Motor Vehicles.

Ms. Kesterson was not able to physically locate Ms. Reid-Bills at this time, so she used the mailing address. In October 2010, Ms. Kesterson mailed the SDT to Ms. Reid-Bills by certified mail to this address.

In December, 2010, Ms. Reid-Bills submitted her invoice to the Bureau for the \$383.90 cost of copying these records, and requested that payment be made to Property Experts Land Co., at 440 W. Fallbrook, Ste. 108, Fresno, California.⁶

20. Contrary to respondents' argument, Ms. Kesterson was under no obligation to inform respondents that their addresses of record with the Bureau were no longer accurate. Ms. Reid-Bills, both as an individual broker and as the designated officer for Associates, was responsible for maintaining accurate directory information with the Bureau. She failed to do so, and such conduct was a "willful" disregard of the Real Estate Law.

Alleged Failure to Perform Visual Inspection and/or Failure to Disclose

21. In the Accusation's fourth cause of action, complainant alleged that respondents "were subject to the provisions of Section 1102.1 of the Civil Code (enactment of this provision requiring use of disclosure statements set forth in Section 1102.6 ...shall not be construed to change the duty of a real estate broker or salesperson pursuant to Section 2079 of the Civil Code)." Complainant further alleged that, as to the seven residential properties described in Factual Finding 13, respondents entered into listing agreements with the sellers, and then "failed to perform the visual inspection and/or failed to disclose to the buyer all facts materially affecting the value or desirability of the property and/or failed to provide any facts materially affecting the value or desirability of the property as required" by Civil Code section 2079.

⁶ On November 1, 2009, Ms. Reid-Bills mailed a "Corporation & Officer Change Application" to the Bureau (stamped received on November 23, 2009), and requested that Associates' corporation name be changed to Property Experts Land Company, that the dba Help-U-Sell be added to this new corporate name, and that its main and mailing address be changed to 440 W. Fallbrook Avenue, #108, Fresno. The Bureau took no action on this request and a license was never issued to Property Experts Land Company.

In addition, as to three of these properties (Sample Avenue, N. 4th Street, and N. Oak Hill Circle), complainant alleged that Ms. Reid-Bills submitted a written "Real Estate Transfer Disclosure Statement" required pursuant to Civil Code sections 1102.3 and 1102.6, and that, under the heading "Agent's Inspection Disclosure," wrote the following: "The listing agent is acting as a sales representative in this transaction & is not qualified or trained to make many [sic] determinations regarding the condition or suitability of this property" (hereafter, the "not trained or qualified" disclosure).

Complainant alleged: (1) that respondents' conduct "demonstrated negligence or incompetence in performing an act for which they are required to hold a license," within the meaning of section 10177, subdivision (g); and (2) that as the officer designated by Associates, Ms. Reid-Bills failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required, and willfully violated the Real Estate Law, within the meaning of sections 10159.2 and 10177, subdivisions (d) and (h). (Accus., Fifth Cause of Action.) Ms. Kesterson testified that Civil Code section 1102 requires the seller or the seller's agent to make a visual inspection of the property and to disclose any material information that might affect its value in writing. In her opinion, while the sellers of "real estate owned" (REO) properties are exempt, there are no exemptions for the seller's agent.⁷

22. *Motion to Dismiss*: At the July 25, 2013 hearing, Ms. Reid-Bills made an oral motion to dismiss the fourth cause of action, and related designated officer allegation. She argued that, pursuant to section Civil Code section 1102.2, subdivision (c), a seller's agent is not required to provide the buyer with a written transfer disclosure statement (TDS) for REO properties. Complainant objected to this motion as untimely. On November 15, 2013, respondents' motion was denied without prejudice. The issue was to be determined at the conclusion of the evidentiary hearing following additional briefing and argument by the parties.

23. *Civil Code section 2079*: Civil Code section 2079, subdivision (a), provides, in pertinent part:

(a) It is the duty of a real estate broker or salesperson . . . to a prospective purchaser of residential real property comprising one to four dwelling units . . . to conduct a reasonably competent and diligent visual inspection of the property offered for sale and to disclose to that prospective purchaser all facts materially affecting the value or desirability of the property that an investigation would reveal, if that broker has a written contract with the seller to find or obtain a buyer or is a broker who acts in cooperation with that broker to find and obtain a buyer.

⁷ Complainant's theory changed over the course of this hearing. In October 2012, Mr. Rich argued that there was "no claim that [respondents] failed to make a written disclosure."

24. *Written Transfer Disclosure Statements:* Civil Code section 1102 et seq. (Article 1.5, "Disclosures Upon Transfer of Residential Property") outlines the requirements for written transfer disclosure statements. These requirements apply "to any transfer by sale... of real property or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units." Section 1102, subdivision (a), expressly provides that the requirements of the article apply "Except as provided in Section 1102.2."

Civil Code section 1102.2 provides, in pertinent part, that "this article does not apply to the following:

[¶] . . . [¶]

(c) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by any foreclosure sale after default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure . . .

25. It is undisputed that all of the properties in question are residential properties consisting of not less than one nor more than four dwelling units; and that all of the sales involved REO/bank owned properties within the meaning of Civil Code section 1102.2, subdivision (c). In support of its allegations, complainant produced the broker files for these properties, with declarations from the real estate licensees who worked on these transactions with Ms. Reid-Bills, and called these licensees as witnesses. Their testimony is paraphrased as relevant below.

26. *Testimony of Oscar Ramos:* Mr. Ramos has been a licensed real estate salesperson since 1990. His employing broker is London Properties. Mr. Ramos acted as the agent for buyer James R. Cagle in the purchase and sale of the property located at 2119 West Fir Avenue, Fresno, California. The seller was GRP Loan LLC and Help-U-Sell, by Ms. Reid-Bills, was the seller's broker. On August 14, 2009, Mr. Ramos prepared Mr. Cagle's offer to purchase this property, contained in the residential purchase agreement (RPA), and submitted it to Ms. Reid-Bills. The offer was accepted on September 2, 2009. During this transaction, Mr. Ramos spoke to Ms. Reid-Bills on the telephone a few times and communicated by email. Mr. Ramos was at the property with the buyer about four times.

He was aware it was an REO property and that the seller was not required to provide the buyer with a TDS.

Mr. Ramos received the signed TDS form from Ms. Reid-Bills on October 2, 2009; however, nothing was disclosed about the condition of the property on the TDS. Instead, "seller exempt" was written across the "Seller's Information" sections. Under the seller's "Agent's Inspection Disclosure" portion of the TDS, Ms. Reid-Bills provided the "not qualified or trained" disclosure quoted in Factual Finding 21.

Mr. Ramos visually inspected the property. He then completed the "Agent Visual Inspection Disclosure" (AVID) form,⁸ and indicated there were "missing light fixtures" in the kitchen and in all of the bedrooms. The appraisal later noted there was some exposed wiring in the property's light fixtures, but this was not indicated to be a safety hazard. The lender wanted the exposed wiring to be repaired and there was confusion regarding whether all eight of the light fixtures required repair or if only one had loose wiring. This resulted in several weeks delay in closure but it did not create any additional cost to the buyer.

Mr. Ramos testified that, since this transaction, he had been involved in a major accident. As a result, Mr. Ramos was unable to remember the details of any verbal disclosures about the property Ms. Reid-Bills may have made to him during the transaction. He later clarified that he recalled a discussion that the property had been on the market a long time, and he agreed that it was "likely" that Ms. Reid-Bills had provided the property's background and history. Mr. Ramos would definitely prefer that any disclosure of a property's conditions be provided in writing rather than orally, and he would have appreciated knowing about the exposed wiring earlier.

27. *Testimony of Annilee Maud Meyer:* Ms. Meyer has been a real estate salesperson since 1989. Her employing broker is Guarantee Real Estate. Ms. Meyer acted as the agent for buyers David and Elizabeth Musson in the purchase and sale of the property located at 10581 North Oak Hill Circle, in Fresno, California. The seller was Horizon Home Loan Corporation. Help-U-Sell, by Ms. Reid-Bills, was the seller's broker. On September 9, 2009, Ms. Meyers prepared the RPA with the buyers' offer to purchase this property, and submitted it by email to Ms. Reid-Bills. The offer was accepted on September 18, 2009.

This was Ms. Meyer's first REO transaction. She met with Ms. Reid-Bills several times, and had numerous telephone conversations with her. On September 28, 2009, Ms. Meyers emailed Ms. Reid-Bills, asking for "disclosures from your office such as the AVID or agent page of the TDS." In her response that date, Ms. Reid-Bills advised Ms. Meyer that in REO transactions, "there are very limited disclosures that the seller is required to do & the TDS & AVID are not required." She also stated that "... we don't do any inspections & the seller is not required to do a TDS on an REO."

⁸ The AVID form is designed "for use by an agent when a transfer disclosure statement is required or when a seller is exempt from completing a TDS."

Ms. Meyer received the signed TDS form from Ms. Reid-Bills on October 2, 2009; however, nothing was disclosed about the property's condition. "Seller exempt" was written across the "Seller's Information" sections, and Ms. Reid-Bills provided the "not qualified or trained" disclosure quoted in Factual Finding 21.

On receiving the TDS, Ms. Meyer called Ms. Reid-Bills' office to inquire about the disclosure and spoke to her assistant, Edith. Ms. Meyer was again informed that the seller's agent was not required to do a TDS or an AVID. Based on this information, Ms. Meyer ensured that her buyer had good inspections and a good home warranty. The only issues discovered in the buyer's home inspection were cosmetic.

Ms. Meyer testified that this was an "upscale property," and that Ms. Reid-Bills did not make any oral disclosures about its condition. She later clarified that Ms. Reid-Bills did mention minor cosmetic issues about the house in their phone talks, and that Ms. Meyers and the buyers had seen the house before it was relisted as an REO property. Due to the passage of time, Ms. Meyer could not recall whether Ms. Reid-Bills was "extremely knowledgeable" about this property and its condition. She did not have the impression that Ms. Reid-Bills had never visited the property and she was "sure" Ms. Reid-Bills had done a visual inspection of the house.

This transaction was Ms. Meyer's first dealing with a foreclosure property and she did not expect disclosures. She characterized this as a time period "when it was kind of the Wild West of REO's..." There were many discussions about banks and agents not giving disclosures. After this transaction, Ms. Meyer's manager told her that an AVID was required from the other agent "no matter what," and in all subsequent REO transactions, the seller's agents have submitted AVIDs.

28. *Testimony of James Weinkung Liang:* Mr. Liang has been a licensed real estate salesperson since 2003. His employing broker is London Properties. Mr. Liang acted as the agent for buyers Daniel Kulibert and Yinmum Chi in the purchase and sale of the property located at 1942 Richmond Avenue, in Fresno, California. The seller was Aurora Loan Services LLC. Help-U-Sell, by Ms. Reid-Bills, was the seller's broker. On July 25, 2009, Mr. Liang prepared the RPA with the buyers' offer to purchase this property, and submitted it by mail to Ms. Reid-Bills. The offer was accepted. Mr. Liang met with Ms. Reid-Bills when he went to pick up the keys, and he negotiated with her several times by telephone.

Ms. Reid-Bills sent Mr. Liang a TDS on August 27, 2009; however, nothing was disclosed about the property's condition. Instead, "seller exempt" was written across the "Seller's Information" sections, and Ms. Reid-Bills provided the "not qualified or trained" disclosure quoted in Factual Finding 21.⁹

⁹ Mr. Liang acknowledged that he erroneously signed this seller's disclosure; Ms. Reid-Bills signed above.

Based on the amount of time that has passed since this transaction, Mr. Liang could not recall whether Ms. Reid-Bills had provided him with any verbal disclosures about the conditions of the property. He noted that the termite inspector discovered termite problems, but this problem was not one that was easily observed by a broker. There were no substantive repairs required. Several minor repairs were required by the appraisal (e.g., to the toilet tank, due to running water; to the dual-pane window seals, due to moisture; and to a water stained baseboard). Mr. Liang later agreed that Ms. Reid-Bills seemed familiar with and able to intelligently discuss the property. He recalled a conversation with Ms. Reid-Bills in 2012 about a different property, in which she informed him of "quite a few things" about the property's condition. Mr. Liang later inspected that property and found Ms. Reid-Bills' representations about its conditions to be accurate.

In 2009, at the time of this transaction, Mr. Liang understood that sellers were not required to make disclosures in REO transactions. He had some concerns that the broker did not make disclosures to him, but he performed his own inspection and told his clients about this. Mr. Liang did not believe there were any known material facts about the condition of the property that were not disclosed to him and to the buyers by Ms. Reid-Bills. Mr. Liang's opinion was based on his understanding that in REO transactions, the buyer needed to do the inspections and the sellers were exempt from having to disclose material facts. He clarified that he and the buyers had received other mandatory disclosures generated by Ms. Reid-Bills' office, which included a water heater and smoke detector statement of compliance and an "REO Advisory" that provided in part: "1. **Disclosures:** Seller is not exempt from common law and statutory duties concerning fraud and deceit, even though the specific TDS Form is not required to be completed. Seller remains obligated to disclose known material facts affecting the value and desirability of the Property." (Bold in original.)

29. *Testimony of Barry Richard Wooten:* Mr. Wooten has been a licensed real estate salesperson for over 25 years. At the time of this transaction, his employing broker was Guarantee Real Estate. Mr. Wooten acted as the agent for buyer Rodney L. Durst in the purchase and sale of the property located at 7307 Fourth Street, in Fresno, California. The seller was Wells Fargo, NA. Help-U-Sell, by Ms. Reid-Bills, was the seller's broker. On May 18, 2009, Mr. Wooten prepared the RPA with buyers' offer to purchase this property, and submitted it by email to Ms. Reid-Bills' office. A counteroffer was accepted on May 26, 2009, and escrow closed on June 26, 2009. Mr. Wooten met with Ms. Reid-Bills and spoke with her several times by telephone.

Mr. Wooten received the TDS form signed by Ms. Reid-Bills on May 12, 2009; however, nothing was disclosed about the property's condition. "Seller exempt" was written across the "Seller's Information" sections, and Ms. Reid-Bills provided the "not qualified or trained" disclosure quoted in Factual Finding 21. Mr. Wooten interpreted this to mean that Ms. Reid-Bills had exempted herself from the disclosure requirements and there were not going to be any disclosures about the visual inspection and walk-through of the property. He verbally amended his declaration to say that this was a typical real estate REO transaction "except for the nondisclosure."

Ms. Reid-Bills did not provide Mr. Wooten with any oral disclosures about the conditions of the property, either by telephone or in face-to-face conversation. On June 2, 2009, Mr. Wooten did a visual walk-through of the property during the buyer's home inspection. On June 3, 2009, he signed the TDS disclosure form, and incorporated his AVID form on which he disclosed the following: (1) living room: covered opening in wall; (2) bedroom No. 3: wall damage behind door; (3) bath # h [hall]: bath tub is slow draining; (4) bath # m: shower door sweep is missing; (5) other room: smoke detectors need repair; (6) garage/parking (excluding common areas): self-closing door hinge is missing on door to living area, laundry tray faucet is leaking; (7) exterior building and yard – front/side/back: sprinklers have missing and broken heads; and (8) other observed or known conditions: copper pipe leaking on north side of home.

On cross-examination, Mr. Wooten reviewed respondents' Listing Summary for the property, which stated, in part, "Needs some TLC. No FHA or VA Loans." Mr. Wooten did not recall Ms. Reid-Bills explaining the reason for the hole in the wall, or discussing the conditions of the house. He agreed that normally there is "a condition issue" if the seller does not want to go with a government loan.

Mr. Wooten also agreed that a visual inspection of the property would not include turning the water on, and that the slow draining bathtub listed on the AVID was "above and beyond" what was required by a visual inspection.¹⁰ The missing and broken pipes and sprinkler heads, however, were visible without the water being turned on. He reiterated his opinion that material facts about the property were not disclosed. When he hears a licensee say a property "needs some TLC," this means that the house "needs work," but without a site visit, there is no way to know what the agent meant by "TLC," i.e., if the work was cosmetic or if there was a hole in the roof. He would not consider the leaking pipe or some of the other issues to be minor or cosmetic. For example, a water stain could be a red flag indicating a plumbing leak. The home inspection report noted the leaks found in the property's north exterior, but indicated that the supply system "appears serviceable."

Mr. Wooten agreed that Ms. Reid-Bills' office had provided him with various C.A.R. disclosure forms that were neither required by the contract nor state-mandated, as well as several Help-U-Sell forms signed by the buyer urging an inspection of the property.¹¹

¹⁰ His testimony was consistent with the AVID form, which outlines certain limitations on an agent's duty to inspect. For example, regarding "appliances and systems," the AVID form indicates that: "Agent will not operate appliances or systems (such as...sprinkler...) to determine their functionality."

¹¹ These forms included the Statewide Buyer and Seller Advisory, the Market Conditions Advisory, the REO Advisory, and the For Your Protection: Get a Home Inspection form. Help-U-Sell's forms included the Property Disclosure form (strongly advising the buyer to "investigate the condition and suitability of all aspects of the property and all matters affecting the value or desirability of the property..."), and the Home Warranty & Home Inspection Recommendation Form.

30. *Testimony of Juanita Bucio:* Ms. Bucio has been a licensed real estate salesperson for over seven years. At the time of this transaction, her employing broker was Pacific Line Mortgage. Ms. Bucio acted as the agent for buyer Cesar G. Artega in the purchase and sale of the property located at 2314 South Holly Avenue, in Fresno, California. The seller was Atlantic Pacific REO Resolutions & Management. Help-U-Sell, by Ms. Reid-Bills, was the seller's broker. On February 19, 2009, Ms. Bucio prepared the RPA with buyers' offer to purchase this property. The offer was accepted and the closing date was March 16, 2009.

Ms. Bucio received the TDS form signed by Ms. Reid-Bills on March 19, 2009; however, nothing was disclosed about the property's condition. "Seller exempt" was written across the "Seller's Information" sections, and nothing was indicated under the seller's "Agent's Inspection Disclosure" portion of the TDS. Ms. Reid-Bills provided other disclosures as part of the transaction (i.e., REO Advisory and Market Conditions Advisory).

The buyer had driven around the property and was interested. Ms. Bucio spoke to one of Ms. Reid-Bills' agents by telephone to verify that it was still available. Ms. Bucio then completed a visual inspection of the property with the buyer. Ms. Bucio did not complete an AVID form, but she wrote on her March 23, 2009, TDS disclosure: "property has broken windows and missing backdoor to garage and carpets are dirty." She testified that many of the windows on the back of the property were broken and the carpet needed to be replaced. Despite Ms. Bucio's recommendation, the buyer elected not to have a formal home inspection and signed a waiver.

Ms. Bucio initially testified that Ms. Reid-Bills told her that the property was being sold "as is," but that she did not disclose any problems with the property. On cross-examination, Ms. Bucio agreed that Ms. Reid-Bills told her that there was trash and broken windows on site and that there were "some problems" with the property. She also agreed that Ms. Reid-Bills seemed to know all about the property and that she relayed that information to her "whether verbally or in writing." Ms. Reid-Bills' marketing remarks on the Agent Detail Report for this property called it "a true diamond in the rough. . . This property will not qualify for FHA/VA financing." Ms. Bucio interpreted this remark as meaning the property "needs work," and explained that a need for repairs would make it ineligible for FHA financing. She did not believe that Ms. Reid-Bills or her office had misrepresented the property's condition and believed that they had disclosed all material facts. Under the contract, the buyer received a \$200 credit from the seller for repairs.

31. *Testimony of Juan Leonardo Estrada:* Mr. Estrada has been a licensed real estate salesperson since 2008. At the time of this transaction, his employing broker was London Properties. Mr. Estrada acted as the agent for buyers Lee and Judith Ward in the purchase and sale of the property located at 1375 North College Avenue, in Fresno. The seller was Aurora Loan Services LLC. Help-U-Sell, by Ms. Reid-Bills, was the seller's broker. On March 17, 2009, Mr. Estrada prepared the RPA with buyers' offer to purchase this property, and submitted it by email to Ms. Reid-Bills. The offer was accepted and the

closing date was April 24, 2009. Mr. Estrada met with Ms. Reid-Bills and spoke with her several times by telephone.

Mr. Estrada never received a TDS from the listing agent. He recalled that this was a short transaction with only 15 days to close. To facilitate that, he prepared the TDS and completed the disclosures based on his inspection. On the TDS, Mr. Estrada erroneously listed Guarantee Realty as the agent representing the seller, but it should have been Help-U-Sell. The items listed under Seller's Information were crossed out, but Mr. Estrada did not recall if he crossed these out or if someone else had done so. He did not recall that any disclosures about the conditions of the property were made orally to him, and he testified that there were no discussions with Ms. Reid-Bills about the property's conditions. He verbally amended his July 20, 2010, declaration to add that there had been no disclosures about defects in the condition of the property.

Mr. Estrada performed a visual inspection of the property. As reflected under his disclosure portion of the TDS, he found the following conditions or repairs needed: "Missing all appliances in kitchen, cracked and missing tile in kitchen floors, missing some kitchen cabinetry." On cross-examination, Mr. Estrada agreed that Ms. Reid-Bills had disclosed that the "kitchen needs appliances & some cabinet doors & flooring" in the Agent Detail Report for this property. Mr. Estrada agreed that this was similar to his own disclosure. There were no other material facts about the property that should have been disclosed. He did not believe there was any misrepresentation about the conditions. His clients were happy with the transaction. While he did not remember a specific conversation with Ms. Reid-Bills about the conditions, his impression was that she was knowledgeable about the property and had inspected it.

32. Each of these witnesses testified that: (1) their buyers were satisfied with the properties purchased and with the transaction; (2) Ms. Reid-Bills and her office were professional and competent in their particular transaction; and (3) that they would have no problem doing transactions with Ms. Reid-Bills in the future. None of the relevant witnesses considered the "not qualified or trained" disclosure on the TDS form to mean that Ms. Reid-Bills was an incompetent broker. In Mr. Ramos' opinion, Ms. Reid-Bills' office was "above average" for REO brokers he has dealt with and he did not believe that property conditions were being misrepresented by her. Mr. Liang has sold other REO properties. He believed Ms. Reid-Bills to be a competent and responsive broker in the 2009 transaction, and would not have initiated the 2012 contact with her if he believed otherwise.

Respondents' Evidence

33. In support of her argument that she was not required to complete a TDS in an REO transaction, Ms. Reid-Bills relied on article entitled "REO Disclosure Chart" prepared by the "Member Legal Services" division of the California Association of Realtors (C.A.R.), a private statewide trade organization for professionals in real estate. The preface to this chart noted that the "continuing foreclosures by banks and other private lenders and subsequent sales of these properties including real estate owned by banks (known as REO

properties)” necessitates knowledge of disclosure requirements when selling these properties. The chart was described as an “easy-to-use reference guide for determining the general applicability of common disclosure laws for residential real properties of one-to four units,” that were acquired by lenders through the foreclosure process or by deed-in-lieu of foreclosure. As relevant to this matter, the chart provided:

DISCLOSURE (and CAR Form)	DELIVERY TO BUYER	EXPLANATION
Agent’s Duty to Visually Inspect and Disclose (CAR Form AVID)	Required	For residential property with one to four units...a real estate agent is required to conduct a reasonably competent and diligent visual inspection and to disclose to the buyer all facts materially affecting the value or desirability of the property that an investigation would reveal. (Cal. Civ. Code § 2079.) There is no exemption from this requirement for REO sales. CAR Form AVID is not a legally-mandated form, but an agent is strongly advised to use the form to document that he or she has performed the legally required visual inspection.
Material Facts (CAR Form SPQ or SSD) ¹²	Required	A seller is required to disclose any known material facts affecting the value or desirability of the property. Whether something is material or immaterial will ultimately be decided, if necessary, through the legal process by a judge, jury, or arbitrator, based on the facts and circumstances of the case. There is no exemption from this disclosure requirement for an REO sale. CAR Form SPQ or SSD is not legally mandated, but an REO lender is strongly advised to complete the SPQ or SSD, which works like a checklist, to help satisfy the duty to disclose material facts.
Transfer Disclosure Statement (TDS)	Not Required	A residential seller must generally provide a TDS to the buyer disclosing the features and condition of a property. (Cal. Civ. Code § 1102.) An REO lender is exempt from this

¹² SPQ refers to seller property questionnaire; there was no explanation for SSD.

		requirement, but must nevertheless disclose any known material facts that may affect the value or desirability of the property (see Material Facts above).
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34. *Testimony of Julie Kaley:* Ms. Kaley has been a licensed real estate broker for the past eight years. She owns her own brokerage in Merced, California, and has sold REO properties since 2007.

Ms. Kaley owned a Help-U-Sell franchise from 2004 through 2009. To her understanding, a TDS is a seller-signed document. REO Sellers are exempt from filing a TDS because they have never lived on the property and cannot possibly know its condition. Ms. Kaley was unsure if this exemption applies to the seller's agent.

In her practice, Ms. Kaley has used C.A.R.'s forms and disclosure chart to guide her in REO transactions, along with other legal information and advice. If the law is unclear, she consults legal counsel. When she represents the seller in REO transactions, Ms. Kaley stamps "seller exempt" on the seller disclosure and, under agent disclosure, she checks the "see AVID" box. Ms. Kaley completes the AVID in writing and it becomes part of the TDS. She prepares this written disclosure because, when it is in writing, the buyer can see it and she does not forget to disclose anything. Ms. Kaley did not always complete the AVID on REO transactions; she began doing so once the AVID form was created. She did not know whether the disclosure by the seller's agent is required to be in a written form on REO transactions.

Ms. Kaley has known Ms. Reid-Bills for approximately eight years. As both friends and professional colleagues, Ms. Kaley and Ms. Reid-Bills have habitually discussed their REO transactions with each other. In Ms. Kaley's opinion, Ms. Reid-Bills has been competent, knowledgeable, and concerned about doing a good job on her transactions. She did not believe Ms. Reid-Bills would purposefully withhold information or fail to disclose facts to participants in a real estate transaction.

In dealing with REO properties, Ms. Kaley noted that it is imperative to frequently visit and photograph the properties, because conditions can change based on vandalism and the weather. The REO client is relying on the agent to be their "eyes on the ground." Ms. Kaley was aware that Ms. Reid-Bills would inspect her REO properties to give the banks her broker price opinion. She did not know if Ms. Reid-Bills, like herself, occasionally had her staff perform these inspections.

35. *Testimony of Luke Martin:* Complainant Mr. Martin is currently a Supervising Special Investigator II with the Bureau. He was previously the Bureau's Fresno District office manager. In that capacity, Mr. Martin knew Ms. Reid-Bills and he supervised Ms. Kesterson.

Mr. Martin recalled meeting Ms. Reid-Bills in 2004, when he visited her office for a broker office survey/audit of David Poague, who was Ms. Reid-Bills' employing broker at the time. Mr. Martin recalled that Ms. Reid-Bills and her office were professional and cooperative. Following a random review of files, Mr. Martin found several minor compliance items. He recalled a discussion of specific verbiage the brokerage used on the TDS form, which was similar to the "not qualified or trained" disclosure. He understood that it was used because Ms. Reid-Bills was not a license contractor and she recommended such an inspection. Mr. Martin did not recall telling Ms. Reid-Bills that he either approved or disapproved of this language. He agreed that there was no formal disciplinary action taken against the brokerage as a result of this audit.

Mr. Martin discussed this case with Ms. Reid-Bills before filing the Accusation. There was a dispute over copying her transactional files and paying respondents' costs for copying records.¹³ Mr. Martin recalled that, during several conversations on this topic in 2010, Ms. Reid-Bills was confrontational and expressed anger. Because of the anger directed toward Ms. Kesterson, Mr. Martin asked Winston Horn to work with Ms. Reid-Bills to bring Associates' corporate status into compliance.

Mr. Martin is currently the Bureau's citation compliance officer. He noted that the Bureau did not have statutory authority to issue citations to licensees for violations of the Real Estate Law, including TDS disclosures, when the Accusation was issued in late 2010. Effective January 1, 2012, the Bureau was granted statutory citation authority. (§ 10080.9.) Mr. Martin agreed with Ms. Kesterson's assessment that an incomplete TDS would indicate a possible problem with some aspect of disclosure, and that a blank TDS was a red flag that there had been no inspection.

36. *Testimony of Winston Horn:* Mr. Horn is a special investigator with the Bureau. Sometime in 2010, he asked by Mr. Martin to be the Bureau's "fresh voice" due to the persistent ill feelings between Ms. Reid-Bills and the Bureau, particularly regarding Ms. Kesterson. Mr. Horn testified that this was not his case and that he did not investigate transactions where Ms. Reid-Bills was the broker. His sole purpose was to listen to Ms. Reid-Bills' concerns and to try to help her obtain proper licensing for the corporation and fictitious business name. In this context, he brought Ms. Reid-Bills some paperwork to assist in having the corporate status filed correctly. He believed he and Ms. Reid-Bills were able to establish a good rapport. Mr. Horn denied having said that, if this was his case, he would not have pursued the Accusation against her.

37. *Testimony of Mae Alene Reid:* Ms. Reid is Ms. Reid-Bills' mother. She worked for her daughter from 2003 through mid-2011, as office manager, performing administrative, banking and receptionist functions.

¹³ In 25 years with the Bureau, Mr. Martin had never had a broker request payment for producing records.

Ms. Reid testified that, in 2004, she overheard a conversation between Ms. Reid-Bills and complainant Luke Martin, during an audit of the files of Ms. Reid-Bills' former partner, David Poague. Ms. Reid indicated that Mr. Martin reviewed some language on a TDS and said that he did not like the verbiage but that it was "not illegal." Ms. Reid testified that, as the office manager, she did not recall ever receiving any mail from the Secretary of State, giving the office notice of the suspension of Associates' corporate status. She also testified that, in November 2009, she overheard Ms. Kesterson tell Ms. Reid-Bills that she "did not have to tell" Ms. Reid-Bills "anything" about the nature of her investigation.

Ms. Reid's testimony is of little evidentiary value. Her testimony was in response to persistent leading questions by her daughter; her memory was independently quite poor; and she was obviously hostile to Mr. Lazark.

38. *Testimony of Ms. Reid-Bills:* Ms. Reid-Bills obtained her undergraduate degree in television broadcasting in 1985. She then pursued coursework toward a master's degree and worked in marketing, public relations and communications. She obtained her salesperson license in 1993, and became involved in the mortgage loan industry. She described herself as a loan officer who cared about her clients, many of whom were lower income. In 2003, while a salesperson, she bought her first Help-U-Sell franchise, with the idea of combining loans with real estate sales. Because Help-U-Sell is based on a set fee, rather than a percentage per transaction, it is a volume business. Mr. Poague was her employing broker, until she obtained her broker license in 2004.

Ms. Reid-Bills recalled her 2004 meeting with Mr. Martin and specifically remembered discussing the "not qualified or trained" disclosure language with him. Mr. Poague had given Ms. Reid-Bills this verbiage for the TDS and said it had been "checked out" by an attorney. Ms. Reid-Bills explained to Mr. Martin that it was used for liability purposes. She recalled Mr. Martin saying that the Bureau did not like the language but that it was "not illegal" to use it. She would not have continued to use it if he had said otherwise.

In 2007, the real estate market dried up and she became involved in REOs. This job required the agent to do more for less. Ms. Reid-Bills always did her own property inspections because it is her name and reputation, and she takes this very seriously. The REO lenders required their agents to conduct weekly inspections of their properties because they were worried about squatters. In addition, she had to know the properties in order to prepare reports and give buyer price opinions which are based on the condition of the property.

Ms. Reid-Bills acknowledged that, during this time period (2008 – 2010), she was extremely busy, working 12 to 18 hours a day, seven days a week. She completed between 50 and 100 transactions each year, compared to the average real estate agent who she estimated completed less than one transaction a month. She also moved several times to keep expenses down. She conceded that she had "probably missed" notifying the Bureau of address changes; this was "not at the top of [her] list of tasks" to do.

Ms. Reid-Bills testified that she would never intentionally act on behalf of a corporation with a suspended license. She did not dispute that Associates' status was suspended but she emphasized that she never received notice of suspension from the Secretary of State. She reasoned that, because she had an individual broker license, she could have done all the transactions under this license. She only sold under the corporation license "for liability purposes." If she had known that Associates' status was suspended, it would have been "stupid" of her to continue transacting under their name, rather than as an individual broker. She honestly did not know about the suspension. She disputed that there was any evidence that she had "willfully" continued to operate as Help-U-Sell after learning it was suspended.

Ms. Reid-Bills believed that Bureau, through Ms. Kesterson, "botched" its investigation. She has always had a good relationship with the Bureau, as well as Mr. Martin, in the past and has sent clients to them when she believed there were issues. She worked with Ms. Kesterson's father as a loan officer. Once Ms. Kesterson became involved, the Bureau's attitude toward her was that they were in control. "Things got ugly" when Ms. Reid-Bills asserted her rights (to payment for copying transactional files). Even though Ms. Kesterson could easily have contacted her by telephone, she never told Ms. Reid-Bills that Associates' corporate status was suspended or about the problem with her addresses. Ms. Reid-Bills would have corrected Associates' corporate status in 2009 if Ms. Kesterson had told her it had been suspended. Instead, Ms. Kesterson "focused on nailing me." She also believed Ms. Kesterson was coached by the Bureau's former attorney, Mr. Rich, to portray her as uncooperative at the initial hearing.

When Ms. Reid-Bills first got involved in REO sales, she did not have any training in this specific area; it was "trial by fire." She relied on C.A.R.'s REO Disclosure Chart that had been prepared by its legal department. This chart specifically states that sellers are exempt from the TDS requirement. As indicated in the transactions at issue in this case, she did provide TDS forms even though they were not required, noting the seller exemption.

Ms. Reid-Bills has never taken the position that she does not have to inspect REO properties. To the contrary, she believes it is her duty to inspect and disclose any information she has to the buyer. She did the inspections and verbally disclosed the properties' conditions. None of the agents or buyers complained. She provided buyers with information about the property in the written agent detail listings, provided verbal disclosures, provided a TDS and gave them more disclosures than required.

39. *Changed Practices:* Ms. Reid-Bills strongly disagrees with the Bureau's position that a seller's agent in an REO sale is required to provide written disclosure on the TDS, AVID, or other writing. However, in the three years since she received the Accusation, Ms. Reid-Bills has altered her practice by completing an AVID reflecting her visual inspection in all of her REO transactions. She would comply with any decision indicating that a written disclosure is required. Since learning of Associates' suspension, Ms. Reid-Bills has only operated under her individual license.

Ms. Reid-Bills has been licensed as a realtor for over 20 years. She has two sons, one of whom is still a minor. This work is her livelihood. While there have been a few complaints against her, none went to a disciplinary hearing. At the time of these allegations, she was "just trying to keep her head above water." She was not willfully trying to keep the Bureau from finding her. Ms. Reid-Bills noted that her REO work is much slower now and she expressed her intention to focus more on mortgage lending. She intends to be more cognizant of these requirements in the future. She agrees that some consequences are necessary, that she should "take some lumps," but does not believe she should lose her license.

40. *Continuing Education:* As indicated in her July 7, 2012 Broker Renewal Application, Ms. Reid-Bills provided verification of completion of 45 hours of continuing education. These courses included a four-hour course in "Home Inspection" and a three-hour course in "Ethics, Professional Conduct & Legal Aspects of Real Estate."

41. *Other Factors:* The licensees who testified for the Bureau in this matter uniformly held positive opinions and impressions about Ms. Reid-Bills' professionalism and competence as a broker in their respective transactions. Their opinions were consistent with those of Ms. Kaley. Many of these witnesses described a general sense of confusion about the REO disclosure requirements in the industry at the time of the transactions described above, and several of these witnesses were still unclear about the exact nature and form of the disclosures required. None of the buyers involved in these transactions made any complaints against respondents or expressed any dissatisfaction about their property purchases to their agents.

Discussion

42. The REO sellers were exempt from the use of TDS forms for the properties at issue under Civil Code section 1102.2, subdivision (c). However, as these sellers' agents, respondents were not relieved of their common law obligation to inspect and disclose under Civil Code section 2079. As recognized in *Assilzadeh v. Cal. Federal Bank, et al.* (2000) 82 Cal.App.4th 399, 410 (*Assilzadeh*), "[t]he fact that the seller acquired the property in a nonjudicial foreclosure sale and was therefore exempt from statutory disclosure under Civ. Code, § 1102.2, subd. (c), did not relieve the seller of its common law duty of disclosure." Civil Code section 2079 "is declarative of the common law regarding this duty." (*Id.* at 413.) This duty requires the disclosure of facts materially affecting the value or desirability of the property that are known by the seller which are not known to, or within the reach of the diligent attention and observation of the buyer. Undisclosed facts are "material if they would have a significant and measurable effect on market value." (*Ibid.*) In *Assilzadeh*, the court determined that a broker's written disclosure of the existence of a lawsuit regarding the property satisfied this duty.

In complying with Civil Code section 2079, the standard of care owed by a broker is "the degree of care that a reasonably prudent real estate licensee would exercise" as

“measured by the degree of knowledge through education, experience, and examination, required to obtain a license.” (Civ. Code § 2079.2.)

43. To comply with Civil Code section 2079 in an REO transaction, a seller’s agent must: (1) conduct a reasonably competent and diligent visual inspection of the property offered for sale, and (2) provide a written disclosure to the prospective purchaser of all facts known to the seller or its agent that materially affect the value or desirability of the property that an investigation would reveal. While Civil Code section 2079 does not expressly mandate that a written disclosure be provided, the obligation to do so arises from Civil Code section 1102.1:

(a) In enacting Chapter 817 of the Statutes of 1994, it was the intent of the Legislature to clarify and facilitate the use of the real estate disclosure statement, as specified in Section 1102.6.¹⁴ The Legislature intended the statement to be used by transferors making disclosures required under this article and by agents making disclosures required by Section 2079 on the agent’s portion of the real estate disclosure statement, in transfers subject to this article. **In transfers not subject to this article, agents may make required disclosures in a separate writing.** The Legislature did not intend to affect the existing obligations of the parties to a real estate contract, or their agents, to disclose any fact materially affecting the value and desirability of the property, including, but not limited to, the physical conditions of the property and previously received reports of physical inspections noted on the disclosure form set forth in Section 1102.6 or 1102.6a, and that nothing in this article shall be construed to change the duty of a real estate broker or salesperson pursuant to Section 2079. . . (Bolding supplied.)

44. Ms. Reid-Bills does not claim that she was/is exempt from the duty to inspect and disclose. Her position has been that neither the written TDS nor any other written disclosure, such as the AVID, is required of a seller’s agent in REO transactions and that oral disclosures are sufficient. As indicated above, this argument is not persuasive. Further, while Ms. Reid-Bills relied on C.A.R.’s Disclosure Chart in her defense, she failed to heed its strong recommendation that an REO seller’s agent complete an AVID form to document compliance with the disclosure requirement. In this regard, respondents failed to use the degree of care of a reasonably prudent real estate licensee, such as Ms. Kaley, in similar circumstances. The motion to dismiss the fourth cause of action and related designated officer allegations is denied.

¹⁴ Civil Code section 1102.6 is the statutory “Real Estate Transfer Disclosure Statement” Form.

The evidence strongly suggested that Ms. Reid-Bills was personally familiar with the conditions of the properties in question and that she had inspected them. However, Ms. Reid-Bills' efforts to establish that she provided oral disclosures to the buyers and/or their agents sharply underscored the reason why written disclosures are required. Due to the passage of time, many of the witnesses were simply unable to recall what Ms. Reid-Bills had told them about the property's conditions (e.g., Ms. Meyer, Mr. Liang). The majority of these witnesses testified on direct examination that respondent had provided no verbal disclosures; however, on cross-examination, they were able to recall certain disclosures and some witnesses agreed that respondent had not failed to disclose any material facts. Intervening events, such as an accident, affected the memory of at least one of the witnesses to whom oral disclosures were alleged made (Mr. Ramos). Mr. Wooten maintained that she provided no oral disclosures.

45. In each of these transactions, respondents failed to provide prospective buyers or their agents any meaningful written disclosure that satisfied their obligation under Civil Code section 2079, subdivision (a).¹⁵ Complainant established that respondents failed to comply with Civil Code section 2079 because they failed to disclose in writing to the buyers all facts materially affecting the value or desirability of the property. In this regard, the testimony of Mr. Wooten, that seemingly minor problems may actually be a red flag for a more serious problem, is particularly persuasive. These conditions are material and must be disclosed in writing.

46. Respondents' Civil Code section 2079 disclosure obligation was not satisfied: (1) by providing other written disclosures urging buyers to conduct their own inspections (e.g., REO Advisory, Statewide Buyer and Seller Advisory form); (2) by vague statements in listings and Agent Detail Report (such as "needs TLC," does not qualify for government financing, etc.) that do not describe the specific material fact or condition affecting the property's value; or (3) by the impressions of witnesses years later that Ms. Reid-Bills seemed "intimately acquainted" with the conditions of the property.

47. Complainant has established the violations alleged by clear and convincing evidence, and that respondents' licenses should be revoked. Considering the record as a whole, and particularly Factual Findings 39 through 41, it would not be against the public interest to allow Ms. Reid-Bills to continue to practice under a restricted broker license, subject to conditions outlined below.

LEGAL CONCLUSIONS

1. *Burden and Standard of Proof:* In an Accusation seeking to revoke, suspend, or otherwise discipline respondents' professional licenses, the agency has the burden of proof

¹⁵ While respondents provided TDS forms to the buyers' agents for all but the property on North College Avenue, the conditions of the properties were not disclosed.

to establish the allegations in the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App. 3d 853, 856.) As set forth in the Factual Findings and Legal Conclusions as a whole, complainant has met his burden of establishing the allegations in the Accusation and that the corporate broker license issued to Associates and the individual broker license issued to Ms. Reid-Bills should be revoked, as more specifically set forth below.

2. Section 10177 authorizes the Commissioner to suspend or revoke the license of a real estate licensee, including the license of a corporation, who has done any of the following, including:

[¶] . . . [¶]

(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.

[¶] . . . [¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

[¶] . . . [¶]

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

3. 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 provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required." (§10159.2, subd. (a).)

4. *First Cause of Action:* As set forth in Factual Findings 6 through 14, legal cause is established to revoke all licenses and licensing rights of Associates for violating section 10177, subdivision (d), and 10 CCR section 2742, subdivision (c), based on its conduct of continuing to engage in business as a real estate broker licensee while no longer in good standing with the Secretary of State.

5. *First and Fifth Causes of Action:* As set forth in Factual Findings 6 through 14, legal cause is established to revoke all licenses and licensing rights of Ms. Reid-Bills, in her capacity as the designated officer for respondent Associates, for violating section 10177, subdivisions (d), 10159.2, and 10 CCR section 2742, subdivision (c), based on her conduct of failing to ensure and secure respondent Associates' full compliance with the Real Estate Law, by continuing to engage in business as a real estate broker licensee while no longer in good standing with the Secretary of State.

6. *Second Cause of Action:* As set forth in Factual Findings 15 through 20, legal cause is established to revoke all licenses and licensing rights of Associates for violating sections 10162, 10165, and 10177, subdivision (d), and 10 CCR section 2517, based on its conduct of failing to have and to maintain a principal place of business and failing to maintain that information on file with the Commissioner.

7. *Second and Fifth Causes of Action:* As set forth in Factual Findings 15 through 20, legal cause is established to revoke all licenses and licensing rights of Ms. Reid-Bills, in her capacity as Associates' designated officer, for violating sections 10162, 10165, and 10177, subdivision (d), and 10 CCR section 2517, based on her conduct of failing to ensure and secure Associates' full compliance with the Real Estate Law, by failing to have and to maintain a principal place of business and failing to maintain that information on file with the Commissioner.

8. *Third Cause of Action:* As set forth in Factual Findings 15 through 20, legal cause is established to revoke all licenses and licensing rights of Ms. Reid-Bills for violating sections 10162, 10165, and 10177, subdivision (d), and 10 CCR section 2517, based on her conduct of failing to have and to maintain a principal place of business and failing to maintain that information on file with the Commissioner.

9. *Fourth and Fifth Causes of Action:* As set forth in Factual Findings 21 through 46, legal cause is established to revoke all licenses and licensing rights of Associates and Ms. Reid-Bills for violating section 10177, subdivision (g), and Civil Code sections 2079, by their conduct of negligently failing to disclose to the buyers in writing, all facts materially affecting the value or desirability of the properties sold. Legal cause is further established to revoke all licenses and licensing rights of Ms. Reid-Bills, in her capacity as Associates' designated officer, based on her conduct of failing to ensure and secure Associates' compliance with Civil Code section 2079 and section 10177, subdivision (d).

10. As set forth in the Factual Findings and Legal Conclusions as a whole, all licenses and licensing rights of Associates are revoked.

11. As set forth in the Factual Findings and Legal Conclusions as a whole, all licenses and licensing rights of Ms. Reid-Bills are revoked. Pursuant to Business and Professions Code section 10156.5, subdivision (a), and 10 CCR section 2930, a restricted broker license shall issue as outlined in Order II, below.

ORDER

I. *Respondent Associates Land Company, Inc.*: All licenses and licensing rights of Respondent Associates Land Company, Inc. under the Real Estate Law are hereby REVOKED.

II. *Respondent Janet Yvonne Reid-Bills*: All licenses and licensing rights of Respondent Janet Yvonne Reid-Bills (Respondent) under the Real Estate Law are hereby REVOKED; provided, however, a RESTRICTED REAL ESTATE BROKER LICENSE SHALL BE ISSUED to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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

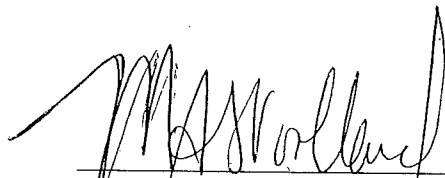
6. *Reporting Condition:* Respondent shall report in writing to the Bureau of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

7. During the period of the restricted license, Respondent shall not serve as the designated officer for any other licensee.

8. Upon satisfactory completion of the probationary term, the restrictions on Respondent's restricted broker license shall terminate, and her license shall be fully restored.

DATED: May 20, 2014



MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings