

FILED

MAR -1 2013

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 KEVIN SCOTT EANES,)
 KEVIN GEVORK POGOSYAN, and)
 JONATHAN DUC NGUYEN,)
)
 Respondents.)
 _____)

NO. H-2659 FR
(As to KEVIN SCOTT EANES Only)

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on December 13, 2012. The Findings of Fact set forth herein are based on one or more of the following: (1) Respondent KEVIN SCOTT EANES' (hereinafter "EANES" or "Respondent") express admissions; (2) affidavits; and/or, (3) other evidence.

This Decision revokes a real estate license on grounds of unlicensed activities and the mishandling of trust funds.

The right to reinstatement of a revoked real estate license 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.

FINDINGS OF FACT

1

On August 19, 2011, Luke Martin made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and form for the Notice of Defense were mailed, by certified and regular mail to Respondent at his last known mailing address on file with the Department on August 19, 2011.

2

On December 13, 2012, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

3

At all times herein mentioned, Respondent was and now is, licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

4

At all times herein mentioned, EANES was licensed by the State of California Department of Real Estate (herein the "Department") as a real estate broker from about January 6, 2006 until about December 9, 2009, when his broker license was revoked and he was issued a restricted real estate salesperson license. EANES was not affiliated with any broker beginning about December 9, 2009.

5

On about June 10, 2010 EANES' restricted salesperson license was suspended indefinitely.

6

At all times herein mentioned, KEVIN GEVORK POGOSYAN (herein "POGOSYAN") was licensed by the Department as a real estate salesperson from about September 20, 2001 and as a real estate broker from about April 14, 2010.

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POGOSYAN was in the employ of EANES from about June 28, 2008 until about December 8, 2009; and in the employ of JONATHAN DUC NGUYEN (herein "NGUYEN") from about December 22, 2009 until about April 14, 2010.

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At all times herein mentioned, NGUYEN was and now is licensed by the Department as a real estate broker.

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On about April 28, 2011, NGUYEN was approved by the Department for a mortgage loan originator license endorsement.

At all times herein mentioned EANES AND NGUYEN engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others, for compensation or in expectation of compensation within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public, wherein Respondent leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated the sale, purchase or exchanges of leases on real property, or on a business opportunity or collected rents from real property, or improvements thereon, or from business opportunities.

In so acting as a real estate broker, as described in Paragraph 10 above, EANES accepted or received trust funds from or on behalf of owners, tenants, and others in connection with the leasing, renting, and collection of rents on real property or improvements thereon.

The aforesaid trust funds accepted or received by EANES were deposited, or caused to be deposited by him, into one or more trust fund accounts maintained by him, for the handling of trust funds at the Clovis, California branch of Westamerica Bank, including but not necessarily limited to "Kevin Scott Eanes Frankian Property Management Trust Fund Account," account number xxxxxx315 (herein "Trust #2").

Between about January 1, 2009 and December 8, 2009, while licensed as a real estate broker, and between December 9, 2009 and May 28, 2010, in connection with the property management activities described in Paragraph 12, above, EANES:

(a) caused, suffered or permitted the balance of funds in Trust #2 to be reduced to amounts less than the liability of Frankian Property Management (herein "FPM") resulting in trust fund shortages in violation of Section 2832.1 of Chapter 6, Title 10, California Code of Regulations (herein "the Regulations") as follows:

<u>Date</u>	<u>Shortage Amount</u>
9/30/09	\$24,652.93
10/30/09	\$63,585.74
12/31/09	\$99,042.28
4/30/10	\$110,397.86
5/28/10	\$111,603.56;

(b) failed to keep a columnar record in chronological sequence of all trust funds received and disbursed from Trust #2 containing all the information required by Section 2831 of the Regulations;

(c) failed to keep a separate record for each beneficiary or transaction for Trust #2 containing all the information required by Section 10145 of the Code and Section 2831.1 of the Regulations;

(d) failed to reconcile at least once a month, the balance of all separate beneficiary or transaction records with Trust #2, as required by Section 2831.2 of the Regulations;

(e) failed to place trust funds entrusted to him into the hands of a principal on whose behalf the funds were received, into a neutral escrow depository, or into a trust fund account in the name of EANES, as trustee at a bank or other financial institution, in conformance with the requirements of Section 10145 of the Code and Section 2832 of the Regulations; and

(f) caused, suffered or permitted money of others which was received and held by EANES in Trust #2 to be commingled with Respondent's own money, in violation of Section 10176(e) of the Code.

14

On about December 18, 2001, EANES entered into a Property Management Agreement (herein "Agreement") with Veronica Flores (herein "Flores") to manage her property located at 1822 East Brandywine Lane, Fresno, CA 93720 (herein "Brandywine property").

15

Between about October 2009 through May 2010, EANES failed to forward rent payments, security deposits and operating funds held in trust for Flores in the amount of about \$10,351.00 in connection with the Brandywine property, contrary to the Agreement, in violation of Sections 10176(i) and 10177(g) and (j) of the Code.

16

On about June 14, 2008, EANES entered into an Agreement with Ross Hightower (herein "Hightower") to manage his property located at 2881 E. Huntington Blvd., Unit 107, Fresno, CA 93721 (herein "Huntington property").

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In about May 2010, EANES failed to forward rent payments and security deposits held in trust for Hightower in the amount of about \$3,872.00, in connection with the Huntington property, contrary to the Agreement, in violation of Section 10177(g) and (j) of the Code.

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In about June 2009, EANES, through FPM, entered into an Agreement with Irma Condor (herein "Condor") for her property located at 1411 Annadale Ave, Sanger, CA 93657 (herein "Sanger property").

In about May 2010, EANES failed to forward rent payments in the amount of about \$1,206.00, security deposits in the amount of about \$900.00, and payments to vendors in the amount of about \$599.00, held in trust for Condor in connection with the Sanger property, contrary to the Agreement, in violation of Section 10177(g) and (j) of the Code.

On about August 8, 2009, EANES, through FPM, entered into an Agreement with Lilibeth and Rudolfo Floro (herein "the Floro's") for their four (4) properties located at 649 W. Ashcroft, Clovis, CA 93612; 4668 N. Bond Ave., Fresno, CA 93726; 2881 E. Huntington Blvd., Unit 150, Fresno, CA 93721 and 5145 E. Lane Ave., Unit 235, Fresno, CA 93727 (herein "Floro's four (4) properties").

In about May 2010, EANES failed to forward rent payments held in trust for the Floro's in the amount of about \$3,035.00 in connection with the Floro's four (4) properties described above, contrary to the Agreement, in violation of Section 10177(g) and (j) of the Code.

On about February 5, 2010, POGOSYAN and/ EANES, through Franklin Property Management (herein "FRANKLIN"), entered into an Agreement to Find a Tenant with property owner Robert Auer (herein "Auer") for property located at 5140 E. Kings Canyon Ave., Unit 126, Fresno, CA 93727 (herein "Kings Canyon property").

On about February 9, 2010, POGOSYAN and EANES, as "Agent for Owner," negotiated a one (1) year Lease Agreement with tenant Rita Lowe (herein "Lowe") and collected the first month's rent of about \$725.00 and a security deposit in the amount of about \$600.00 in connection with the Kings Canyon property, representing to Lowe on a Transfer of Security Deposit that her security deposit would be sent to property owner Auer, when in fact, no such security deposit was ever sent to Auer, in violation of Sections 10130, 10176(a) and (i), and 10177(j) of the Code.

PRIOR DISCIPLINE

Effective December 9, 2009, in Case No. H-2357 FR, the Real Estate Commissioner revoked, with the right to a restricted license, EANES' real estate broker license for violating Sections 10176(e) and (i) and 10148 of the Code and Sections 2831.2, 2832(a), 2831, 2831.1, 2831.2 of the Regulations in conjunction with 10177(d) of the Code.

Effective June 10, 2010, in Case No. H-2357 FR, the Real Estate Commissioner suspended EANES' restricted real estate sales license, in violation of Section 10177(k), in that Respondent performed activities requiring a license during a time when Respondent was not

affiliated with any broker from about December 9, 2009 and June 10, 2010; failed to pay for the cost of the prior audit; made a substantial misrepresentation in violation of Section 10176(a) of the Code; and failed to take and pass the Professional Responsibility Exam.

DETERMINATION OF ISSUES

1

The facts found above constitute cause under Sections 10130, 10145, 10176(a), (e) and (i), 10177(g) and (j) of the Code and Sections 2831, 2831.1, 2831.2, 2832 and 2832.1 of the Regulations, in conjunction with Section 10177(d) of the Code for suspension or revocation of all license and license rights of EANES under the Real Estate Law.

2

The standard of proof applied is clear and convincing proof to a reasonable certainty.

ORDER

The real estate license and license rights of Respondent KEVIN SCOTT EANES under the provisions of Part I of Division 4 of the Business and Professions Code are hereby revoked.

This Decision shall become effective at 12 o'clock noon on MAR 21 2013.

IT IS SO ORDERED

2/27/2013

REAL ESTATE COMMISSIONER


WAYNE S. BELL

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

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DEPARTMENT OF REAL ESTATE

By K. Contreras

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9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 KEVIN SCOTT EANES,) NO. H-2659 FR
13 KEVIN GEVORK POGOSYAN, and)
14 JONATHAN DUC NGUYEN,) DEFAULT ORDER
15 Respondents.) (As to KEVIN SCOTT EANES Only)

16 Respondent KEVIN SCOTT EANES, only, having failed to file a Notice of
17 Defense within the time required by Section 11506 of the Government Code, is now in default.
18 It is therefore ordered that a default be entered on the record in this matter as to Respondent
19 KEVIN SCOTT EANES, only.

20 IT IS SO ORDERED 12/13, 2012.

21 Real Estate Commissioner

22 By:

23 Joseph Carrillo
24 JOSEPH CARRILLO
25 Regional Manager

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