

FILED

BEFORE THE BUREAU OF REAL ESTATE

AUG 21 2017

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By B. Nicholas

* * *

In the Matter of the Accusation of

MANUEL ENRIQUE RUELAS,

Respondent.

CalBRE No. H-3027 FR

OAH No. 2017010787

DECISION

The Proposed Decision dated July 20, 2017, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Order, Page 7, of the Proposed Decision, line 4, change "Department" to "Bureau".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker license is granted to Respondent.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on SEP 11 2017.

IT IS SO ORDERED 8/17/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

A handwritten signature in black ink, appearing to read "Daniel J. Sandri", is written over a horizontal line.

By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MANUEL ENRIQUE RUELAS,

Respondent.

Case No. H-3027 FR

OAH No. 2017010787

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on June 20, 2017, in Oakland, California.

Real Estate Counsel Truly Sughrue represented complainant Brenda Smith, Supervising Special Investigator, State of California.

Manuel Enrique Ruelas, respondent, was present and represented himself.

The matter was submitted on June 20, 2017.

FACTUAL FINDINGS

1. Manuel Enrique Ruelas (respondent) is licensed or has licensing rights as a real estate broker under the Real Estate Law.¹ He was first licensed as a real estate broker on August 17, 2000. Respondent's license was in full force and effect at all times relevant to the charges herein and will expire on August 16, 2020, unless renewed.

2. On July 26, 2016, complainant Brenda Smith, acting in her official capacity as a Supervising Special Investigator for the State of California, Bureau of Real Estate (Bureau), issued an accusation against respondent. The accusation alleges that respondent formed a corporation called Lighthouse Realty Group LTD (Lighthouse) that was not licensed by the Bureau as a fictitious business or as a real estate corporation. The accusation further alleges that Lighthouse entered into an agreement with Arturo and Carman M. (sellers) to sell their house, and that without their consent respondent extended the term of

¹ The Real Estate Law is found at Part 1 of Division 4 of the Business and Professions Code, beginning with section 10000, and includes sections 10130, 10131, 10159.5, 10176 and 10177. All statutory references are to the Business and Professions Code unless otherwise noted.

the listing agreement several times, and then refused to cancel the listing agreement upon sellers' request.

Unlicensed entity

3. On March 16, 2012, respondent incorporated Lighthouse with the California Secretary of State. The Bureau did not issue a license to Lighthouse or a license to respondent to do business using a fictitious business name.

Respondent's representation of sellers

4. Sellers owned and lived in a house located on Piazza Drive in Salinas, California (Piazza House). The outstanding mortgage on the house was greater than its market value, and sellers desired to sell the house in a short sale, which meant that the selling price would be less than the outstanding indebtedness. Approval for a short sale was provided by the lender, Fay Servicing.

5. On May 31, 2014, respondent's corporation, Lighthouse, entered into a Residential Listing Agreement (listing agreement) to represent sellers in the sale of the Piazza House. Among the terms of the listing agreement were that respondent would receive a six percent commission to be paid upon the sale of the Piazza House and for the listing agreement to terminate on December 1, 2014. No modification or extension of the listing agreement was ever signed.

6. On June 1, 2014, respondent listed the Piazza House on MLSListings (MLS), a multiple listing service. MLS is a platform for broker-to-broker exchanges of information regarding houses on the market in a multi-county area. Robert Bustamante is the compliance and customer support manager for MLS, and he testified about MLS listing rules and procedures. Only licensed real estate brokers can list houses on MLS and they pay a fee for the service. Only one broker can list a property at a time.

7. On December 5, 2014, respondent presented sellers with an offer from Buyer No. 1 to purchase the Piazza House. Sellers accepted the offer and Fay Servicing agreed to the short sale terms. Escrow was scheduled to close on January 9, 2015, but Buyer No. 1 requested an extension. The transaction did not close and mutual cancellation instructions were signed on February 3, 2015. Respondent continued to market the Piazza House and he extended the MLS listing until March 31, 2015.

8. On February 5, 2015, respondent presented sellers with an offer from Buyer No. 2 to purchase the Piazza House. Sellers accepted the offer and Fay Services agreed to the short sale terms. Escrow was scheduled to close on March 20, 2015, but on March 16, 2015, the escrow was cancelled and the transaction did not close. Respondent continued to market the Piazza House and he extended the MLS listing until April 30, 2015.

9. On March 16, 2015, respondent presented sellers with an offer from Buyer No. 3 to purchase the Piazza House. The contract was cancelled on April 10, 2015. Respondent continued to market the Piazza House and he extended the MLS listing until May 30, 2015.

10. On April 14, 2015, respondent presented sellers with an offer from Buyer No. 4 to purchase the Piazza House. Sellers accepted the offer and Fay Services agreed to the short sale terms. Escrow was scheduled to close on May 20, 2015, but on June 11, 2015, the escrow was cancelled and the transaction did not close. Respondent continued to market the Piazza House and he extended the MLS listing until June 30, 2015.

11. On approximately June 7, 2015, respondent presented sellers with an offer to from Buyer No. 5 to purchase the Piazza House. Sellers refused to accept this offer and advised respondent they wanted to cancel the listing agreement, because they no longer wanted to work with him. Respondent did not cancel the listing agreement. Respondent told sellers Fay Servicing would not permit him to cancel the listing. On June 26, 2015, respondent extended the MLS listing to July 30, 2015.

12. Sellers met with respondent in his office on July 16, 2015, and requested a copy of all documents he had received from Fay Servicing and a copy of the listing agreement. Respondent did not provide the documents. Sellers also told respondent they wanted to cancel the listing agreement, but respondent did not do so. On July 22, 2015, respondent extended the MLS listing to September 30, 2015.

13. Following the July 16, 2015 meeting with respondent, sellers contacted the Bureau regarding cancellation of the listing agreement. After speaking with respondent, the Bureau's representative advised sellers that respondent was not able to provide a copy of the listing agreement, and that the MLS listing had been extended.

14. On August 3, 2015, sellers contacted MLS and were advised that unless respondent provided MLS with a copy of the listing agreement, the MLS listing would be cancelled. The same day, MLS changed the listing status of the Piazza House from "active" to "withdrawn," which means that the number of days a house is on the market stops accruing. Respondent was unable, when requested, to provide a copy of the listing agreement to MLS, and on August 3, 2015, he cancelled the MLS listing.

Respondent's evidence

15. Respondent met sellers by going door-to-door prospecting for clients. In 2008 he listed another house sellers owned, but when after 60 days on the market that house did not sell, the listing agreement was cancelled. On May 31, 2014, after explaining the terms of the listing agreement, respondent listed the Piazza House for sale. Respondent also explained the short sale process, including the need for the lender's consent and cooperation for a successful sale. Sellers then moved out of the Piazza House into their second home, in anticipation of a sale.

16. Respondent gathered the documents from sellers he needed in order to justify a short sale with the lender, and he listed the property on MLS. Respondent worked closely with Fay Servicing, and he presented four offers to purchase the Piazza House that were accepted by both sellers and Fay Servicing. In each case subsequent financing issues prevented the transactions from closing.

17. After the fourth escrow failed to close, Fay Servicing encouraged respondent to try to obtain another offer. Respondent held an open house on July 6 and 7, 2015, and obtained a fifth offer to purchase. Fay Servicing approved the offer, but sellers did not. Fay Servicing encouraged respondent to continue working with sellers in hopes that the sale would close. Respondent understood, and he told sellers that during the course of a short sale, that when the lender approves an offer, the listing agreement is automatically extended. Respondent encouraged the sellers to cooperate with the escrow agent to complete the sale to Buyer No. 5, but sellers refused to do so.

18. Respondent communicated with sellers regularly while he was marketing the house, and presented every offer to purchase the Piazza House to the sellers and to Fay Servicing. Respondent did not believe he needed a written extension of the listing agreement in order to continue to list the Piazza House with MLS. Respondent testified that the first time sellers asked him to cancel the listing agreement was during the July 16, 2015 meeting in his office. Although he did not cancel the MLS listing at that time, after sellers contacted the Bureau, and a Bureau representative in turn spoke to respondent about the extension of the listing agreement, he realized that his understanding incorrect and he was obligated to cancel the listing agreement and the MLS listing. The MLS listing was then terminated and respondent ceased his efforts to market the Piazza House.

19. Respondent took responsibility for doing business using the corporate name Lighthouse, even though the Bureau had not issued a license to Lighthouse. Lighthouse had been incorporated with the California Secretary of State, and it possessed a City of Salinas business license. On June 21, 2016, respondent filed an application with the Bureau to obtain a license for Lighthouse, but the Bureau requested additional information from respondent that he did not provide. The license was not issued.

20. Respondent credibly testified that he incurred marketing expenses of approximately \$2,000 in his attempt to sell the Piazza House; that he was diligent in his effort to find qualified buyers and to close a transaction; and that he kept sellers informed of the offers that were received.

21. Respondent has held a real estate brokers license since 2000 without prior discipline.

22. Respondent is a single father of two teenage children. He has not been able to support himself and his children from his earnings as a real estate broker, and he drives for Uber to make extra income.

Determination of issues

23. The listing agreement was not extended in writing by the sellers after the original December 1, 2014 expiration date. The listing agreement was terminated by sellers in June 2015, at which time respondent was obligated to terminate the MLS listing. Respondent used an unlicensed corporation, Lighthouse, to engage in the business of real estate with the expectation of compensation.

Costs

24. The Bureau has incurred costs of \$6,555.45 in its investigation and enforcement of this case. That amount represents \$2,884.20 in investigative costs and \$3,671.25 in legal costs. These charges are supported by declarations that comply with California Code of Regulations, title 1, section 1042. In the absence of any evidence or argument to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

1. The real estate commissioner may take disciplinary action against a licensee who has "willfully disregarded the Real Estate Law" (§ 10177, subd. (d).)
2. Section 10176, subdivisions (a) and (i), authorize the Commissioner to suspend or revoke the license of a licensee who has made a substantial misrepresentation or engaged in any conduct which constitutes fraud or dishonest dealing in the course of his duties as a licensee. Section 10177, subdivision (g), authorizes the Commissioner to suspend or revoke the license of a licensee who has "demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license."

The listing agreement was executed on May 31, 2014, and it expired by its own terms on December 1, 2014. Nonetheless, respondent continued to market the property after the agreement expired, and between June 2014 and June 2015, he procured four offers from buyers to purchase the property, all of which were accepted by sellers. (Findings 7 through 10.) Although respondent did not obtain sellers' written consent to extend the listing agreement or the MLS listing during this period, respondent continued to act in the sellers' interest and sellers accepted his services until June 2015. During this time, respondent reasonably believed he was acting with the consent of his principals, the sellers. (See Civil Code section 2317: "Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.")

Sometime in June 2015, sellers had a change of heart and advised respondent they no longer wished him to represent them in the sale of the Piazza Property, even though respondent had an offer to purchase in hand that Fay Servicing would approve. (Findings 11 and 12.) Respondent failed to terminate the MLS listing until August 3, 2015, when he was contacted by the Bureau and by MLS requesting a current listing agreement, which

respondent was unable to provide. Respondent argues that based upon the sellers' prior acceptance of his ongoing representation, and Fay Servicing's encouragement for him to continue his efforts to convince sellers to accept the pending offer from Buyer No. 5, he had ongoing authority to continue the MLS listing. Respondent was mistaken: Since the listing agreement had expired, respondent was obligated to terminate the MLS listing once the sellers asked him to do so. The evidence did not establish that his failure constituted fraud. However, respondent misrepresented to sellers what he had been told by Fay Servicing, and his failure to understand his obligations was negligent. By reason of Findings 11, 12, 18 and 23, cause was established to discipline respondent's license pursuant to sections 10176, subdivision (a), and 10177, subdivision (g).

3. Section 10130 provides that it is unlawful for any person to "engage in the business of, or act in the capacity of, . . . or assume to act as a real estate broker" without first obtaining a license from the real estate commissioner. A real estate broker is a person who, for compensation, "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." (§10131, subd. (a).) Respondent performed services for sellers in the capacity of a real estate broker, using an unlicensed corporation, Lighthouse. By reason of Findings 3, 5, 19 and 23, cause for license discipline exists pursuant to section 10177, subdivision (d), as that section interacts with section 10130.

Disciplinary considerations

4. Respondent used his best efforts to sell the Piazza House for 12 months, but he acknowledged that once sellers asked him to terminate his services and the MLS listing, he was obligated to immediately do so. (Finding 18.) Nonetheless, respondent continued the MLS listing for approximately six weeks after its termination was required. Although the evidence did not establish that sellers were harmed by respondent's conduct, such proof is not required for discipline to be appropriate. Given respondent's long history as a licensee without prior discipline, it is unlikely this or similar conduct will be repeated. Complainant's counsel recommended that respondent receive a restricted license. In this case, issuance of a restricted license will adequately protect the public.

Cost recovery

5. Section 10106 provides that a licensee found to have violated the licensing laws may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Finding 24, it was established that Complainant has incurred \$6,555.45 in actual costs in connection with the investigation and enforcement of this matter.

6. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth certain standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards

include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. With respect to these factors, only respondent's ability to pay is implicated. Respondent is working a second job to supplement his earnings in real estate in order to support himself and his children. For this reason, the Bureau's costs of \$6,555.45 will be reduced by \$3,000. The Bureau's permitted cost recovery is \$3,555.45.

ORDER

All licenses and licensing rights of respondent Manuel Enrique Ruelas, under the Real Estate Law are 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. Conviction or Plea to a Crime

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. Violation of Law

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. Application for Unrestricted License

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 years have elapsed from the effective date of this Decision.

4. Continuing Education Requirement

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 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 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 respondent engaged during the period covered by the report.

7. Cost Recovery

Respondent Manuel Enrique Ruelas shall pay the Bureau its costs of investigation and enforcement in the total amount of \$3,555.45. The payments may be made pursuant to a payment schedule acceptable to the Bureau.

DATED: July 20, 2017

DocuSigned by:
Kirk Miller
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KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings