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OCT 30 2018

DEPARTMENT OF REAL ESTATE
By *K. Krapp*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-3134 FR
)	
PATRICIA MARIA SANCHEZ,)	OAH No. 2018020719
)	
Respondent.)	
)	

ORDER DENYING RECONSIDERATION

On September 07, 2018, a Decision was rendered in the above-entitled matter. The Decision was to become effective on October 02, 2018, and was stayed by separate Order to November 02, 2018.

On September 27, 2018, Respondent petitioned for reconsideration of the Decision of September 07, 2018.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of September 07, 2018, and reconsideration is hereby denied.

IT IS SO ORDERED *October 30, 2018*.

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

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SEP 28 2018

DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:) DRE NO. H-3134 FR
PATRICIA MARIA SANCHEZ,) OAH NO. 2018020719
Respondent.)

ORDER STAYING EFFECTIVE DATE

On September 07, 2018, a Decision was rendered in the above-entitled matter to become effective October 02, 2018.

IT IS HEREBY ORDERED that the effective date of October 02, 2018, is stayed for a period of 30 days to allow Respondent PATRICIA MARIA SANCHEZ to file a petition for reconsideration.

The Decision of September 07, 2018, shall become effective at 12 o' clock noon on November 02, 2018.

DATED: September 28, 2018

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:

PATRICIA MARIA SANCHEZ,

Respondent.

} DRE No. H-3134 FR

} OAH No. 2018020719

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SEP 11 2018

DEPARTMENT OF REAL ESTATE

By X. Huayap

DECISION

The Proposed Decision dated August 10, 2018, 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:

1. Page 2, Factual Findings 3, Line 1, is corrected to read as follows:
"On September 13, 2017...";
2. Page 2, Factual Findings 4, Line 1, is corrected to read as follows:
"Respondent...";
3. Page 4, Factual Findings 14, Line 2, is corrected to read as follows:
"...July 19, 2017...";
4. Page 6, Factual Findings 22, Line 3, is corrected to read as follows:
"July 9, 2018...".

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code Section 11521, the Department 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 Department'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.

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 OCT 02 2018.

IT IS SO ORDERED September 7, 2018

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER



BEFORE THE
DEPARTMENT OF REAL ESTATE¹
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PATRICIA MARIA SANCHEZ,

Respondent.

Case No. H-3134 FR

OAH No. 2018020719

PROPOSED DECISION

This matter was heard before John E. DeCure, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 11, 2018, in Fresno, California.

Megan Olsen, Counsel for the Department of Real Estate (Department), represented Brenda Smith (complainant), a Supervising Special Investigator for the State of California.

Patricia Maria Sanchez (respondent) was present and represented herself.

Spanish/English translation services were provided by certified interpreter Ana Aguilar.

Evidence was received and argument was heard. The record was closed, and the matter was submitted for decision on July 11, 2018.

FACTUAL FINDINGS

Background Information and Jurisdiction

1. On August 30, 2002, respondent was licensed as a real estate salesperson by the Department, license number S/01350843. At all times relevant to the allegations in this proceeding, respondent was employed as a real estate salesperson for Central Valley Properties, Inc. (Central Valley). Her affiliation with Central Valley began on June 22, 2015, and expired effective April 22, 2016. Currently, her license is in a non-working status, which, for purposes of official licensure, the Department designates as "No Broker

¹ Effective July 1, 2018, the Bureau of Real Estate became the Department of Real Estate. (Bus. & Prof. Code, § 10005.)

Affiliation.” Respondent’s license will expire on August 29, 2018, unless renewed or revoked.

2. Respondent has never been licensed with the Department as a real estate broker. Nor has respondent ever held a mortgage loan originator license endorsement of any kind.

3. On August 29, 2017, complainant filed the Accusation in her official capacity. Complainant seeks to discipline the license issued to respondent for alleged violations of Real Estate Law as it relates to respondent’s representation of Jose X.,² in his attempt to obtain refinancing of a mortgage loan secured by real property located on East Illinois Avenue in Fresno, California (the mortgage refinance).

4. Respondents timely filed a Notice of Defense, pursuant to Government Code section 11506. 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. All jurisdictional requirements have been met.

The Mortgage Refinance

5. Jose X., who speaks Spanish and was assisted by an interpreter, testified that he met respondent in March 2015, when he was interested in refinancing the mortgage on his Fresno home. Respondent, who is fluent in Spanish, discussed helping him obtain the mortgage refinance, and assisting him with a name change on the home’s title. She advised him that she needed him to provide her with his income tax identification numbers, income tax returns going back two years, and other financial documentation, including bank statements and paystubs, which he later provided to her at her office. Respondent agreed to “take care of” the mortgage refinance application paperwork and would work toward obtaining the loan, on his behalf.

6. Sometime after Jose X. provided paperwork to respondent at her office, he spoke with her by telephone, at which time she said she had an “offer” and wanted to speak with him about it. On or about October 13, 2015, he went to her residence to further discuss the mortgage refinance process. Respondent provided a form entitled “Initial Fees Worksheet,” containing detailed loan refinance information including the total loan amount, term of the loan, interest rate, origination charges, appraisal fee, credit-report fee, closing/escrow fee, document preparation fee, lender’s title insurance, notary fees, recording fees, hazard insurance, per-diem interest, estimated gross closing and net closing costs, and total estimated funds needed to close the loan. Respondent had Jose X. sign and date the worksheet.

² The victim’s name is kept confidential to preserve his privacy rights.

7. A few days later, Jose X. brought further documentation respondent had requested to her office. Respondent copied the documents and said she would forward them to the lending bank.

8. Several days later, respondent telephoned Jose X. and told him the bank had approved the mortgage refinance. The following day, Jose X. went to respondent's home to further discuss the terms and conditions of the loan. When respondent asked if Jose X. agreed with the terms and conditions, he said yes. Respondent asked him to pay her a \$2,200 fee for forms, which were "expensive." Jose X. paid respondent \$2,200. Respondent issued to him a typed receipt, dated October 13, 2015, that stated:

This is a receipt for paperwork completed in [sic] behalf of Jose [X.] by [respondent] to help him refinance his current home on . . . Illinois Ave. – Fresno, CA 93702.

Amount Paid: \$2,200

Paid in Full

Thank you!!!

Both respondent and Jose X. signed the receipt. Following this event, Jose X. did not hear from respondent regarding the mortgage refinance for approximately two months.

9. Eric Becerra, the Division Vice President of Alterra Home Loans (Alterra), a mortgage lending firm, testified that respondent had referred Jose X. to him as a mortgage refinance client in October 2015. On January 22, 2016, Letha Wilson, a loan officer Mr. Becerra engaged in the mortgage refinance process, sent an email to respondent stating that Jose X. had provided a \$2,300³ fee to respondent and was now concerned as to whether he could "get that back." The email further stated:

I did advise him that we don't charge any upfront fees, but wasn't sure if it was for something else. Can you please contact him in regards to this money?

10. The same day, respondent sent an email response to Ms. Wilson stating: "Yes that charge was in fact for other services i[sic] did for him. I will contact him directly."

11. Mr. Becerra was concerned by this email exchange because in his 20 years of mortgage-lending experience, he had never seen, or approved the type of "up-front" \$2,200 fee respondent had charged Jose X. When Jose X. next visited Mr. Becerra's office, Mr. Becerra, Ms. Wilson, another loan associate, and Jose X., participated in a conference call

³ Based on the evidence, a reasonable presumption may be made that the "\$2,300" fee was a reference to the \$2,200 fee Jose X. paid to respondent in October 2015.

with respondent to question respondent as to why she had charged the up-front fee to Jose X. Respondent claimed it was a fee for "processing his paperwork." Mr. Becerra advised respondent that she had no right to collect such a fee, and advised her to refund the money to Jose X. as soon as possible. Respondent "vaguely" told Jose X. she would work on refunding him the money.

12. Jose X. made several further requests to respondent that she refund to him the \$2,200, but respondent never repaid him.⁴ Upon the advice of Mr. Becerra's firm, Jose X. made a complaint to the Department which initiated this matter.

13. Samuel Barron, III, testified that he has been a real estate broker licensed through the Department since 2006, and was the broker for Central Valley during the events involving Jose X. described above. He stated that respondent, who was a licensed salesperson only, was not authorized by Central Valley to perform any functions other than real estate sales. She was not authorized by Central Valley, or Mr. Barron, to collect fees for loan services. Mr. Barron was completely unaware of respondent's dealings with Jose X. He conducted a thorough search of Central Valley's records and communications, and located no information pertaining to Jose X.

14. Yolanda Chapman, a Special Investigator for the Department assigned to Jose X.'s complaint, interviewed respondent on September 19, 2017. Respondent confirmed that when she met Jose X, he needed help obtaining a mortgage refinance and wished to remove his aunt's name from the title to the property and substituted his name onto the title, because his aunt, who had helped him obtain the original mortgage loan, wanted no further involvement or potential liability regarding the property. Respondent said she told Jose X. she would "help him as a personal favor," but she would charge him "for her time and any expenses" she may have incurred while assisting him. Regarding the \$2,200 fee, and how she had set it at that amount, respondent said that figure "just popped into" her head. Respondent contended Mr. Becerra told her the fee was "ok as long as the fee was collected outside of escrow." When Alterra turned down the loan, respondent intended to refund the fee to Jose X., but wanted to repay him in payments. Respondent stated she had still not repaid any portion of the \$2,200 to Jose X.

15. The evidence established that on January 15, 2016, respondent sent an email to Ms. Wilson, Mr. Becerra, and another Alterra loan processor, and requested a status update on the mortgage refinance, on behalf of Jose X. "and myself."

16. Respondent provided a written explanation to the Department, dated July 19, 2017, in which stated she had agreed, "as a personal favor," to refer Jose X. to some lenders who handled mortgage refinances, help him read documents, and translate for him. She told him she "would have to charge him" for "any expenses incurred" in that process. She later made it clear to Mr. Becerra that she "was only assisting" Jose X. with his paperwork and

⁴ At hearing, complainant verified that respondent refunded the \$2,200 to Jose X., before he left the hearing site.

was charging Jose X. "a fee to cover . . . any costs incurred in the process. According to respondent, Mr. Becerra "was fine with my fee as long as [Jose X.] paid me outside of escrow." In an attached handwritten declaration, she contended she "was merely the translator" for Jose X.

Respondent's Evidence

17. At hearing, respondent reiterated the positions she had previously set forth in writing to the Department, and in her interview with Ms. Chapman. Respondent characterized the matter as a "misunderstanding," contending she was "merely a translator" for Jose X., who was a friend, and had "only helped him with sending and receiving documents." Respondent expressed remorse, and apologized for the "confusion" her actions had caused. She stated she did not know "why I've been fighting this [matter] all this time." Respondent had to borrow \$2,200 to repay Jose X., but she provided that money to him as a refund at hearing, during a recess, and apologized to him.

18. Presently, respondent works as a mortgage lender. She no longer engages in real estate sales, having reached a point where she hated the prospect of "going into peoples' homes" anymore. She was defending herself in this matter because she heard that her mortgage lender's licensure could be negatively affected by discipline against her real estate salesperson's license.

Discussion

19. The evidence established that respondent violated Real Estate Law related to her handling of Jose X.'s mortgage refinance. Specifically, the Department established that respondent, a real estate salesperson who was not a licensed real estate broker, and had no mortgage loan originator license endorsement, nonetheless performed several functions requiring a real estate broker's licensure, including performing services for a borrower in connection with a loan secured directly or collaterally by liens on real property – i.e., a mortgage refinance on Jose X.'s personal residence. These acts constituted acting as a broker without a license, and engaging in loan activity without an endorsement. Respondent's representations to Jose X. that she could charge an advance fee, prior to his approval on a loan, for preparing and handling his loan paperwork, making contacts with lenders on his behalf, and translating, were, under the circumstances, substantial misrepresentations and constituted dishonest dealing, and further demonstrated a willful disregard of Real Estate Laws. Respondent's representation to Jose X. that her charges were intended to cover her paperwork "expenses" was misleading and dishonest: there was no evidence that she incurred any such expenses for sending and receiving documents, which is the extent of the work she said she performed.

20. Although respondent displayed sincere remorse, it was in the vein of her personal sorrow and discomfort over facing an administrative action. Respondent failed to demonstrate any insight into the nature of her misconduct, repeatedly couching the matter in terms of a simple misunderstanding. Her attempts to portray her acts as merely translating

for a Spanish-speaking friend as a “personal favor” – while charging him a \$2,200 fee for her “expenses” in handling his paperwork – were not persuasive, and were belied by substantial evidence indicating that she played a significantly larger role on Jose X.’s behalf. While her repayment of \$2,200 to Jose X. at hearing was a mitigating circumstance, the gesture was substantially delayed, as by the time of hearing, two and one-half years had passed since Mr. Becerra discovered the fee and very appropriately demanded that respondent immediately refund the money. Respondent’s claims that Mr. Becerra had been “ok” with the fee she charged to Jose X. was not persuasive, as it was flatly contradicted by Mr. Becerra’s far more credible account of his stark disapproval of the fee. In sum, respondent failed to take responsibility for her misconduct.

21. The Department established that respondent’s salesperson’s license should be revoked. Considering all the evidence, respondent’s actions are very troubling and demonstrate willful violations of Real Estate Law, and it would be against the public interest to allow her to remain licensed as a real estate salesperson.

Costs

22. Pursuant to Business and Professions Code section 10106, the Department is authorized to seek reimbursement of investigation and prosecution costs at hearing. As of September 18, 2017, the Department incurred \$2,002.50 in attorney charges in connection with the prosecution of this case. Additionally, the Department incurred \$4,488.50 in investigation costs, for a total of \$6,491 in costs. At hearing, the Department submitted a statement of costs and supporting documentation of investigation and prosecution. As set forth below in Legal Conclusion 15, the costs of investigation and prosecution in the total amount of \$6,491 are reasonable.

LEGAL CONCLUSIONS

1. In an Accusation seeking to revoke, suspend, or otherwise discipline a professional license, the Department has the burden of proof 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.)

Statutory Authority

2. Business and Professions Code (Code) section 10131, subdivision (d), provides in pertinent part that:

A real estate broker within the meaning of this part 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:

¶¶ . . . ¶¶

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

3. Code section 10166.01, subdivision (b)(1), states:

“Mortgage loan originator” means an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain.

4. California Code of Regulations, title 10 (Regulation), section 2756, states:

A salesperson must obtain and be maintaining a mortgage loan originator license endorsement and be employed by a licensed real estate broker who has obtained and is maintaining a mortgage loan originator license endorsement to perform acts for which a mortgage loan originator license endorsement is required.

5. Code section 10166.02, subdivisions (b)(1) and (2), provide that:

(b) No individual may engage in business as a mortgage loan originator under this article without first doing both of the following:

(1) Obtaining and maintaining a real estate license pursuant to Article 2 (commencing with Section 10150).

(2) Obtaining and maintaining a real estate license endorsement pursuant to this article identifying that individual as a licensed mortgage loan originator.

6. Code section 10130 prohibits unlicensed broker activity. Code section 10176, subdivision (a), provides that the Department’s Commissioner may discipline a licensee for making substantial misrepresentations. Pursuant to Code section 10176, subdivision (i), the Commissioner may discipline a licensee for conduct constituting fraud or dishonest dealing. Code section 10177, subdivision (d), provides that the Commissioner may discipline a licensee for willful disregard or violation of Real Estate Laws. Code section 10177, subdivision (g), provides that the Commissioner may discipline a licensee for an act of negligence or incompetence.

7. Code section 10085.5, subdivision (a), provides that:

It shall be unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee

(1) for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan or,

(2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of this part.

Causes for Discipline

8. As set forth in Factual Findings 5 through 18, the Department established by clear and convincing evidence that respondent performed services for a borrower in connection with a loan secured directly or collaterally by liens on real property, thereby establishing cause for discipline based on a violation of Code section 10131, subdivision (d).

9. As set forth in Factual Findings 5 through 18, the Department established by clear and convincing evidence that respondent performed acts for which a mortgage loan originator license endorsement was required, and engaged in loan activity without such endorsement, thereby establishing cause for discipline based on violations of Regulation section 2756, and Code section 10166.02, subdivision (b), respectively.

10. As set forth in Factual Findings 5 through 18, the Department established by clear and convincing evidence that respondent acted as a broker without a license, thereby establishing cause for discipline based on a violation of Code section 10130.

11. As set forth in Factual Findings 5 through 18, the Department established by clear and convincing evidence that respondent made substantial misrepresentations, thereby establishing cause for discipline based on violation of Code section 10176, subdivision (a).

12. As set forth in Factual Findings 5 through 18, the Department established by clear and convincing evidence that respondent committed acts of fraud or dishonest dealing, thereby establishing cause for discipline based on violation of Code section 10176, subdivision (i).

13. As set forth in Factual Findings 5 through 18, the Department established by clear and convincing evidence that respondent exhibited a willful disregard of Real Estate Laws, thereby establishing cause for discipline based on violation of Code section 10177, subdivision (d).

14. As set forth in Factual Findings 5 through 18, the Department established by clear and convincing evidence that respondent committed negligent or incompetent acts, thereby establishing cause for discipline based on violation of Code section 10177, subdivision (g).

Cost Recovery

15. The Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106, subd. (a).)

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. No basis to reduce or eliminate the costs in this matter was established. In the absence of evidence to the contrary, costs in the amount of \$6,491 are reasonable.

Conclusion

16. When considering the Factual Findings and Legal Conclusions as a whole, it would be contrary to the public interest to allow respondent to remain licensed.

ORDER

1. Respondent Patricia Maria Sanchez's real estate salesperson's license is revoked.

2. Pursuant to Business and Professions Code section 10106, respondent shall pay the Commissioner's reasonable costs for prosecution, investigation, and enforcement of this disciplinary action in the amount of \$6,491. These costs shall be paid in full or in accordance with a payment schedule as agreed to between respondent and the Commissioner.

DATED: August 10, 2018

DocuSigned by:

John DeCure

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JOHN E. DeCURE

Administrative Law Judge

Office of Administrative Hearings