

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

FEB 10 2000

DEPARTMENT OF REAL ESTATE

By Jean Reno

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
AMADOR EQUITY, INC.,)	No. H-3136 SAC
ROBERT THOMAS JOSEPH PACK)	
Respondents.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On March 28, 1996, a Decision was rendered herein revoking the real estate broker licenses of Respondents but granting Respondents the right to apply for restricted real estate broker licenses upon terms and conditions. Restricted real estate broker license were issued to Respondents on April 30, 1996 and Respondents have operated as restricted licensees without cause for disciplinary action against Respondents since that time.

On June 22, 1999, Respondents petitioned for reinstatement of said licenses and the Attorney General of the

///

1 State of California has been given notice of the filing of said
2 petitions.

3 I have considered the petitions of Respondents and the
4 evidence and arguments in support thereof including Respondents'
5 records as restricted licensees. Respondents have demonstrated
6 to my satisfaction that Respondents meet the requirements of law
7 for the issuance to Respondents of unrestricted real estate
8 broker licenses and that it would not be against the public
9 interest to issue said licenses to Respondents.

10 NOW, THEREFORE, IT IS ORDERED that Respondents'
11 petition for reinstatement is granted and that real estate broker
12 licenses be issued to Respondents if Respondents satisfy the
13 following conditions within nine months from the date of this
14 Order:

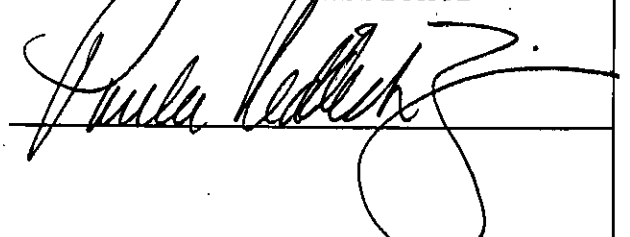
15 1. Submittal of completed applications and payment of
16 the fees for real estate broker licenses.

17 2. Submittal of evidence of Respondent ROBERT THOMAS
18 JOSEPH PACK having, since the most recent issuance of an original
19 or renewal real estate license, taken and successfully completed
20 the continuing education requirements of Article 2.5 of Chapter 3
21 of the Real Estate Law for renewal of a real estate license.

22 This Order shall be effective immediately.

23 DATED: January 12, 2000

24 PAULA REDDISH ZINNEMANN
25 Real Estate Commissioner

26 
27

FILED
APR 9 1996
DEPARTMENT OF REAL ESTATE

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Lauriel Zias

* * *

In the Matter of the Accusation of)
AMADOR EQUITY INC.,) NO. H-3136 SAC
ROBERT THOMAS JOSEPH PACK,) OAH NO. N-9506242
Respondents.)

DECISION

The Proposed Decision dated March 18, 1996, 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.

This Decision shall become effective at 12 o'clock noon
on April 30, 1996.

IT IS SO ORDERED 3/28, 1996.

JIM ANTT, JR.
Real Estate Commissioner

J. Antt Jr.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:) No. H-3136 SAC
)
AMADOR EQUITY INC.,) OAH No. N-9506242
ROBERT THOMAS JOSEPH PACK,)
)
Respondents.)

PROPOSED DECISION

On February 27, 1996, in Sacramento, California, Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David A. Peters, Counsel, represented the complainant.

Respondents were represented by Robert Thomas Joseph Pack, in pro per.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Complainant Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, filed the Accusation against Amador Equity Inc. dba Sierra Pacific Loan Service ("respondent Amador") and Robert Thomas Joseph Pack ("respondent Pack") (collectively "respondents") in his official capacity.

II

Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code as follows:

A. Amador Equity Inc. as a real estate broker corporation, through respondent Pack as designated broker officer.

B. Robert Thomas Joseph Pack as a real estate broker and as the designated broker-officer for respondent Amador.

III

Whenever reference is made herein to an act or omission of "respondents", such reference shall be deemed to mean the act or omission of each of the respondents named herein, acting individually, jointly and severally.

IV

At all times herein mentioned, respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California within the meaning of Business and Professions Code section 10131(d) for or in expectation of compensation, in that respondents collected payments and/or performed 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.

The evidence did not establish that respondents operated or conducted a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation.

V

In the course of the activities described in Finding IV above, respondents received and disbursed funds held in trust on behalf of another or others.

VI

At all times mentioned herein, respondents maintained the following trust accounts:

- A. Pacific State Bank, Stockton, California: Trust Account No. 1610495, Amador Equity Inc., dba Sierra Pacific Loan Service Collections/Client Trust Account ("Trust #1").
- B. Bank of America, Jackson, California: Trust Account No. 06160-02313, Amador Equity Inc. Client Trust Account ("Trust #2").

VII

Between August 24, 1994 and August 29, 1994, an audit was conducted of respondent Amador's accounting and other records by Anita Johnson, an auditor with the Department of Real Estate. The audit covered the period from January 1, 1993 to July 29, 1994.

VIII

In connection with the collection and disbursement of trust funds in Trust #1, respondents failed to properly deposit and maintain said trust funds in such a manner that as of July 29, 1994, there was a shortage of \$4,917.19 of trust funds in said account.

IX

At least one of the accounts in Trust #1 held a negative balance as of July 29, 1994 that resulted from respondent Amador making disbursements chargeable to said account in excess of receipts credited therein. Additional negative balances resulted from insufficient funds ("NSF") checks received from trustors following disbursements on behalf of beneficiaries. Respondents permitted the aggregate balance of trust funds in Trust #1 to be reduced to an amount less than the aggregate trust fund liability to the owners of said funds.

X

In connection with the collection and disbursement of trust funds in Trust #1, respondents failed to obtain prior written consent of their principals for the reduction of the aggregate balance of trust funds in Trust #1 to an amount less than the aggregate trust fund liability to the owners of said funds, as required by Title 10, California Code of Regulations, section 2832.1.

XI

In connection with Trust #2, as of July 29, 1994, respondents had an unexplained trust account overage of \$39.20. Respondents failed to perform a monthly reconciliation of said unexplained trust account overage as required by Title 10, California Code of Regulations, section 2833.

XII

In connection with the collection and disbursement of trust funds in Trust #2, respondents commingled their own money with the money of others which was received and held by respondents. Respondents had \$150.00 of their own money in Trust

#2, which exceeded the limit of \$100.00 which is permitted under Title 10, California Code of Regulations, section 2835(a), to pay service charges or fees assessed against the account by the bank or financial institution where the account was maintained.

XIII

Respondent Pack, as the designated broker-officer for respondent Amador, failed to exercise reasonable supervision and control over the licensed activities of respondent Amador required by Business and Professions Code section 10159.2, as set forth in Findings VIII, IX, X, XI and XII.

XIV

Respondent Amador collected approximately \$2,347,408 in servicing and payoffs for the period August 1, 1993 to July 29, 1994. Respondent Pack testified that he believed the trust fund shortage of \$4,917.19 was "insignificant" given the large amount of money handled by respondent Amador on a yearly basis. Respondent Pack's testimony was disturbing, in that it showed a lack of appreciation of his fiduciary duty and that of respondent Amador as real estate licensees.

XV

Respondents have taken some steps to correct some of the internal accounting problems which led to the trust fund irregularities, including the purchase of additional computer software which reconciles each beneficiary account and the month-end bank account. Respondent Pack has changed the numbering of client files so that information can be cross-referenced by date, amount of deposit, trustor and beneficiary.

XVI

Respondent Pack argued that the goal of the Department's audit should be compliance, not punishment, and that discipline is unwarranted in this case. This argument is not persuasive. Discipline is imposed herein, not as punishment, but for the protection of the public. Respondent Pack's perception of the trust fund shortage as insignificant demonstrates that respondent Pack is in need of remediation if he is to remain the designated broker-officer of respondent Amador. Under all of the circumstances herein, it would not be contrary to the public interest to permit respondents to remain licensed, with appropriate restrictions.

DETERMINATION OF ISSUES

I

Clear and convincing evidence to a reasonable certainty established cause for discipline against respondents pursuant to Business and Professions Code section 10177(d) in conjunction with Business and Professions Code section 10145 and Title 10, California Code of Regulations, sections 2830 and 2832.1 by reason of Findings VIII, IX and X.

II

Clear and convincing evidence to a reasonable certainty established cause for discipline against respondents pursuant to Business and Professions Code section 10177(d) in conjunction with Title 10, California Code of Regulations, section 2833 by reason of Finding XI.

III

Clear and convincing evidence to a reasonable certainty established cause for discipline against respondents pursuant to Business and Professions Code section 10176(e) by reason of Finding XII.

IV

Clear and convincing evidence to a reasonable certainty established cause for discipline against respondent Pack pursuant to Business and Professions Code section 10177(h) by reason of Findings VIII, IX, X, XI, XII and XIII.

V

The matters set forth in Findings XIV, XV and XVI are considered in making the Order below.

ORDER

I

All licenses and licensing rights of respondent Amador Equity Inc. under the Real Estate Law are revoked pursuant to Determination of Issues I, II and III; and all licenses and licensing rights of respondent Robert Thomas Joseph Pack under the Real Estate Law are revoked pursuant to Determination of Issues I, II, III and IV. However, restricted real estate broker licenses shall be issued to respondents pursuant to section 10156.5 of the Business and Professions Code if respondents makes application therefor and pays to the Department of Real Estate

the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to respondents 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:

- A. The restricted licenses issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondents' conviction or plea of nolo contendere to a crime which is substantially related to respondents' fitness or capacity as a real estate licensee.
- B. The restricted licenses issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondents 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.
- C. Pursuant to section 10148 of the Business and Professions Code, respondents shall pay the Commissioner's reasonable cost for an audit to determine if respondents have corrected the trust fund violations found in Determination of Issues I, II and III. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted licenses issued to respondents pending a hearing held in accordance with section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

- D. Respondent Pack 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 Pack fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent Pack presents such evidence. The Commissioner shall afford respondent Pack the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
- E. Respondent Pack shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent Pack fails to satisfy this condition, the Commissioner may order suspension of respondent Pack's license until respondent passes the examination.
- F. Respondents 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.

Dated: March 18, 1996

Catherine B. Frink
CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

FILED
JUL - 7 1995

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Lucie A. Zinn

In the Matter of the Accusation of

AMADOR EQUITY INC.,
ROBERT THOMAS JOSEPH PACK,

}

Case No. H-3136 SAC

OAH No. N9506242

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 501 J Street, Suite 220 (Second
Floor Hearing Rooms), Sacramento, CA 95814

on Tuesday, February 27, 1996, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: July 6, 1995

By David A. Peters
DAVID A. PETERS Counsel

1 DAVID A. PETERS, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

FILED
JUN 21 1995
DEPARTMENT OF REAL ESTATE

5 Telephone: (916) 227-0789

By *Laurie A. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 AMADOR EQUITY INC.,)
14 ROBERT THOMAS JOSEPH PACK,)
Respondents.)

No. H-3136 SAC

ACCUSATION

15 The Complainant, Charles W. Koenig, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against AMADOR EQUITY INC. dba Sierra Pacific Loan Service
18 (hereinafter "Respondent AMADOR") and ROBERT THOMAS JOSEPH PACK
19 (hereinafter "Respondent PACK"), is informed and alleges as
20 follows:

21 I

22 The Complainant, Charles W. Koenig, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation in
24 his official capacity.

25 II

26 Respondents AMADOR and PACK are presently licensed
27 and/or have license rights under the Real Estate Law (Part 1 of

V

1
2 During the course of the mortgage loan brokerage
3 activities described in Paragraph III above, Respondents received
4 and disbursed funds held in trust on behalf of another or others.

5 VI

6 Within the three-year period immediately preceding the
7 filing of this Accusation and continuing through on or about
8 July 29, 1994, Respondents maintained the following trust
9 accounts:

<u>Account Name & No.</u>	<u>Bank</u>
11 Amador Equity Inc., DBA: Sierra 12 Loan Service Collection Client 13 Trust Account Trust Account No. 1610495 (hereinafter "Trust #1")	Pacific State Bank Stockton, California
14 Amador Equity Inc., Client Trust 15 Account Trust Account No. 06160-02313 (hereinafter "Trust #2")	Bank of America Jackson, California

16 VII

17 In connection with the collection and disbursement of
18 said trust funds, Respondents failed to deposit and maintain said
19 trust funds in Trust #1 in such manner that as of July 29, 1994,
20 there was a shortage of \$4,917.19 of trust funds.

21 VIII

22 In connection with the collection and disbursement of
23 trust funds as described in Paragraph VII above, Respondents
24 failed to obtain prior written consent of their principals for the
25 reduction of the aggregate balance of trust funds in Trust #1 to
26 an amount less than the aggregate trust fund liability to the
27 owners of said funds.

IX

1
2 In connection with Trust #2, as of July 29, 1994,
3 Respondents had an unexplained trust account overage of \$39.20.
4 Respondents failed to perform a monthly reconciliation of said
5 unexplained trust account overage as required by Section 2833 of
6 Title 10, California Code of Regulations (hereinafter
7 "Regulations").

X

8
9 In connection with the collection and disbursement of
10 trust funds described in Paragraph V above, Respondents commingled
11 their own money, with the money of others which was received and
12 held by Respondents.

XI

13
14 The acts and/or omissions of Respondents AMADOR and PACK
15 described above are grounds for the suspension or revocation of
16 the licenses and/or license rights of Respondents AMADOR and PACK
17 under the following sections of the Code and Regulations:

18 (1) As to Paragraphs VII and VIII under Section
19 10177(d) of the Code in conjunction with Section 10145 of the Code
20 and Sections 2830 and 2832.1 of the Regulations;

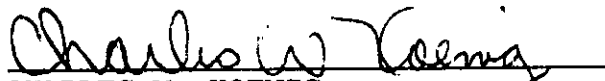
21 (2) As to Paragraph IX under Section 10177(d) of the
22 Code in conjunction with Section 2833 of the Regulations; and

23 (3) As to Paragraph X under Section 10176(e) of the
24 Code.

25 In the alternative the acts and/or omissions of
26 Respondent PACK, as described above, constitute failure on the
27 part of Respondent PACK, as designated broker-officer for

1 Respondent AMADOR, to exercise reasonable supervision and control
2 over the licensed activities of Respondent PACK required by
3 Section 10159.2 of the Code, and is cause for the suspension or
4 revocation of Respondent PACK's licenses and/or license rights
5 under Section 10177(h) of the Code.

6 WHEREFORE, Complainant prays that a hearing be conducted
7 on the allegations of this Accusation and that upon proof thereof
8 a decision be rendered imposing disciplinary action against all
9 licenses and license rights of Respondents, under the Real Estate
10 Law (Part 1 of Division 4 of the Business and Professions Code)
11 and for such other and further relief as may be proper under other
12 provisions of law.

13
14 
15 CHARLES W. KOENIG
Deputy Real Estate Commissioner

16 Dated at Sacramento, California,
17 this 15th day of June, 1995.

18
19
20
21
22
23
24
25
26
27