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FILED
JUL 31 2012
DEPARTMENT OF REAL ESTATE
By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MERLINDA ALDEFOLLA MATUSZEWSKI, et al., Respondents.	)))))))	NO. H-4189 SD OAH NO. N-2011050325

ORDER STAYING EFFECTIVE DATE

On July 5, 2012, a Decision was rendered in the above-entitled matter to become effective on July 31, 2012.

On July 30, 2012, Respondent Matuszewski requested a stay for the purpose of filing a petition for reconsideration of the Decision of July 5, 2012.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of July 5, 2012, shall become effective at 12 o'clock noon on August 30, 2012.

DATED: July 31, 2012

REAL ESTATE COMMISSIONER

By WAYNE S. BELL
Chief Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MORTGAGE PARTNERS, INC., RICK SCOTT SCHULLER and MERLINDA ALDEFOLLA MATUSZEWSKI, Respondents.	No. H-4189 SD OAH No. 2011050325

DECISION

The Proposed Decision dated June 1, 2012, 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)(c) of the Government Code, the following corrections are made:

On page 1, paragraph 3 of the Proposed Decision should be amended to:

"Merlinda Aldefolla Matuszewski, (respondent) was present throughout the administrative hearing and was not represented by an attorney."

On page 4, second to the last paragraph of number 10, of the Factual Findings of the Proposed Decision under *Respondent Merlinda Matuszewski's Testimony* should be amended in part to:

"...affecting the real property (Danawoods)..." "In addition, neither Mortgage Partners, Inc. nor Rick Schuller had any interests at all in Precious Peridot Corporation."

The Decision suspends or revokes the real estate license and all license rights of MERLINDA ALDEFOLLA MATUSZEWSKI.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension 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.

This Decision shall become effective at 12 o'clock noon on JUL 31 2012.

IT IS SO ORDERED 7/5/2012.

Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MORTGAGE PARTNERS INC., RICK SCOTT SCHULLER, and MERLINDA ALDEFOLLA MATUSZEWSKI Respondent.	Case No. H-4189 SD OAH No. 2011050325

PROPOSED DECISION

Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 1, 2012, in San Diego, California.

John W. Barron, Counsel, represented complainant Tricia D. Sommers, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Jeffrey L. Brown, Attorney at Law represented Merlinda Aldefolla Matuszewski, (respondent) who was present throughout the administrative hearing. and was not represented by an attorney.

The matter was submitted on May 1, 2012.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 22, 2011, complainant Tricia D. Sommers, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed the accusation in her official capacity. The accusation and other required jurisdictional documents were served on respondent Matuszewski.

Respondent Matuszewski timely filed a notice of defense.

On May 1, 2012, the administrative record was opened. The only issue before the administrative hearing was the matter involving the Fourth Cause for Discipline alleged in the accusation against respondent Matuszewski. Jurisdictional documents were presented. Sworn testimony and documentary evidence were received. The record was closed and the matter was submitted.

License History

2. Respondent was originally licensed as a real estate salesperson in 1998. She is presently licensed as a real estate salesperson and has all licensing rights. Her salesperson license will expire on March 30, 2014, unless renewed.

Timeline of Events

3. In January 2008, buyers A. Eco and Nickel Eco (buyers) verbally authorized respondent to assist them in the purchase of a San Diego home. In May 2008, respondent requested the buyers pay $12,000 to Precious Peridot, a Nevada corporation, as down payment towards the purchase a home.

4. On May 19, 2008, buyers remitted to respondent a cashier's check payable to Precious Peridot in the amount of $12,000 for a down payment on property that had not yet been identified. Respondent's written signed receipt stated, "Make it pay to the order of Precious Peridot 12 K for purchase of property."

5. On August 11, 2008, respondent entered into a short-sale listing agreement with seller Rommel Pineda (seller), the owner of a property located on Danawoods Lane in San Diego (the property). The buyers decided to purchase the property and respondent was to assist the buyers with arranging financing for the property. Respondent told the buyers to move into the property without signing any written contract or agreement with the buyers or sellers. The buyers did not secure a mortgage on the property.

6. In September 2008, the buyers moved into the property, as instructed by respondent, without signing any written contract and/or agreement with the respondent or the sellers.

7. In May 2009, the property went into foreclosure the buyers were told, by an agent for Prudential California Realty, to move out by June 5, 2009. The buyers never purchased the property and respondent never returned the $12,000 deposit for the purchase of the property.

The Complainant alleged the following Business and Professions Code violations:

- Business and Professions Code section 10130 (broker's license required);
- Business and Professions Code section 10176 subdivision (a), (making substantial misrepresentation);
- Business and Professions Code section 10176 subdivision (b), (making any false promise likely to induce);
- Business and Professions Code section 10176 subdivision (i), (fraud or dishonest dealing);
- Business and Professions Code section 10177 subdivision (d), (willful disregard/violation of Real Estate Law and

- Business and Professions Code section 10177 subdivision (g), (negligence/incompetence in performing act requiring license.)

Nickel C. Eco's Testimony

8. Nickel C. Eco was born in 1931. In 2008, he and his wife entered into a verbal agreement with respondent for the purchase of a home. Mr. Eco deposited his life savings of $12,000 from his work in the Navy toward the purchase of a home. Mr. Eco testified that respondent told him and his wife to issue a cashier's check for $12,000 to "Precious Peridot" as down payment on the Danawoods property.

On May 19, 2008, pursuant to respondent's direction, respondent paid by cashier's check $12,000 to Precious Peridot. Respondent provided a piece of paper which instructed Mr. Eco and his wife on how to issue the check. Respondent wrote, "Make it pay to the order of Precious Peridot, 12k for purchase of property." Mr. Eco did not know at the time that Precious Peridot was a Nevada Corporation. A California Residential Purchase Agreement was prepared listing the initial deposit on the Danawoods property in the amount of $12,000. Respondent was listed as the agent and MPI as the Real Estate broker firm. The contract was unsigned and undated. However, on August 11, 2008, respondent signed the lead based paint hazards disclosure form for the property. Mr. Eco testified that once respondent received the $12,000, respondent told Mr. Eco that he and his wife could move into the property.

In September 2008, Mr. Eco and his wife moved into the Danawoods property. They did not pay any rent or a mortgage. Mr. Eco was influenced and persuaded by respondent and believed respondent was going to arrange financing for the home. Mr. Eco testified that respondent told him, "You can live there for awhile with no payments." Mr. Eco testified that he was "surprised" that he and his wife could live in a home for a while without paying any monthly payments. Mr. Eco testified that he did not have any dealings with a real estate broker, only respondent.

Mr. Eco testified that they lived at the Danawoods property for approximately five months. During that time, it was discovered that repairs to the stairway would cost between three and five thousand dollars. As a result of the costly repairs, Mr. Eco told respondent he did not want to purchase the home. Respondent told him, "You can live there until I find you another home." From December 2008 until June 2009, respondent did not return his calls.

In June 2009, Mr. Eco was surprised the Danawoods property went into foreclosure and he and his wife were forced to move out. Mr. Eco requested respondent return his $12,000 deposit and respondent refused.

Mr. Eco's testimony was credible, sincere and direct. Documentation submitted corroborated his testimony regarding the existence of the deposit as down payment for the purchase of property.

Sara Knapton's Testimony

9. Sara Knapton has been a special investigator for the department for the past three years. Prior to being an investigator, Ms. Knapton was a tax auditor for the Board of Equalization for nearly two years. She has conducted over 400 investigations. Ms. Knapton received a complaint from an anonymous tip regarding the respondent. Ms. Knapton discovered Precious Peridot (PP) corporation was licensed in the State of Nevada and the license was revoked on December 1, 2006. Ms. Knapton telephoned respondent's broker (Rick Schuller) who informed Ms. Knapton that he was not involved in any way with the Danawoods property. Mr. Scheller did not receive any notification or telephone call from respondent regarding the initial sale of the property.

On January 26, 2011, Ms. Knapton prepared a memorandum of the interview she had with respondent. Respondent told Ms. Knapton that the buyers owed PP corporation money for a mortgage held in Temecula. Respondent told Ms. Knapton that she had a residential purchase agreement to purchase a property for Mr. and Mrs. Eco but did not answer Ms. Knapton's more substantive questions and hung up the telephone on several occasions.

On February 4, 2011, Ms. Knapton interviewed Mrs. Eco who stated Mrs. Eco was friends with respondent's mother and that Mrs. Eco gave respondent a cashier's check for $12,000 as down payment on the Danawoods property. Respondent told Mrs. Eco to move into the property even though the transaction had not closed. After living in the Danawoods property for four months, Mrs. Eco received an eviction notice stating the property was in foreclosure. Mrs. Eco "found out she did not own the property and attempted to get her money back." Ms. Knapton asked Mrs. Eco if she "owed money to respondent." Mrs. Eco's response was, "No, I did not owe respondent money and the $12,000 was only to be used as the down payment on a house."

Respondent Merlinda Matuszewski's Testimony

10. Respondent received her real estate salesperson license in 1998. From 1999 to 2008 she worked at Mortgage Partners Real Estate Agency. From December 2011 to present she worked at Realty Executive with various brokers. Respondent testified that she had a personal relationship with Mr. and Mrs. Eco and loaned them $12,000 "as a personal loan." Respondent testified, "They (the Eco's) need to pay me for my help." Respondent testified that the Danawoods property was only a rental. Respondent was "working as an independent contractor" and "did not report everything" to her broker. She was aware her broker, Rick Schuller, provided a letter to the Department denying his involvement with the Danawoods property. Broker Schuller wrote, "I reviewed our computer records and verified the Mortgage Partners, Inc and (I) was not involved in any real estate or loan transaction affecting the real property (Dandwoods)…" "In addition, neither Mortgage Partners, Inc. nor Rick Schuller had any interests at all in Precious Peridot Corporation."

Evaluation

11. Respondent appeared anxious, angered, and annoyed throughout the administrative hearing. Her testimony was not supported by the submitted documentation. Her conduct demonstrated a pattern of repeated and willful disregard for the real estate laws. She acted as a rogue salesperson without broker control or supervision. She failed to return $12,000 of a down payment placed on property that was not sold and made false promises. Her incompetence in performing her duties as a real estate salesperson presents a risk to the public. Cause exist to impose discipline and revoke respondent's real estate salesperson license under Business and Professions Code section 10176, subdivisions (a)(b)(i), section 10177, subdivisions (d) and (g).

LEGAL CONCLUSIONS

Purpose of an Administrative Disciplinary Action

1. The object of an administrative proceeding aimed at revoking a license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. In a disciplinary administrative proceeding, the burden of proof is upon the party asserting the affirmative. (*Small v. Smith, supra,* 16 Cal.App.3d at 457.)

3. In an action seeking to impose discipline against the holder of a professional license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

Applicable Statutes

4. Business and Professions Code section 10176, subdivision (a), provides in part that the commissioner may revoke a real estate license where the licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of making any substantial misrepresentation.

5. Business and Professions Code section 10176, subdivision (b), provides in part that the commissioner may revoke a real estate license where the licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of making any false promises of a character likely to influence, persuade, or induce.

6. Business and Professions Code section 10176, subdivision (i), provides in part that the commissioner may revoke a real estate license where the licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any

other conduct whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

7. Business and Professions Code section 10177, subdivision (d), provides in part the commissioner may revoke the license of a real estate licensee who has willfully disregarded or violated the real estate law rules and regulations.

8. Business and Professions Code section 10177, subdivision (g), provides in part the commissioner may revoke the license of a real estate licensee who has demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

Cause Exists to Revoke Matuszewski's License

9. Clear and convincing evidence established cause to revoke respondent's real estate salesperson license under Business and Professions Code section 10176, subdivisions (a)(b)(i), section 10177,subdivisions (d) and (g). Her conduct demonstrated a pattern of repeated and willful disregard for the real estate laws. She acted as a rogue salesperson without broker control or supervision. She failed to return $12,000 of a down payment placed on property that was not sold and made false promises and substantial misrepresentations. Her conduct influenced, persuaded and induced the buyers to deposit their life savings into an account towards the purchase of a home. Respondent engaged in dishonest dealings and her incompetence in performing her duties as a real estate salesperson presents a risk to the public.

Respondent did not establish that she has rehabilitated herself and therefore, it would be contrary to the public interest to permit her to hold a real estate license, even on a restricted basis.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

All real estate licenses and licensing rights of respondent Merlinda Aldefolla Matuszewski are revoked.

DATED: June 1, 2012

Carla Nasoff

CARLA NASOFF
Administrative Law Judge
Office of Administrative Hearings