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FILED

NOV 13 2013

DEPARTMENT OF REAL ESTATE
BY: 

7
8 BEFORE THE BUREAU¹ OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
)	No. H-04535 SD
12 EUGENE KOCHERGA,)	
)	<u>ACCUSATION</u>
13 Respondent.)	
14 _____)	

15 The Complainant, Veronica Kilpatrick (“Complainant”), a Deputy Real Estate
16 Commissioner of the State of California, for cause Accusation against EUGENE KOCHERGA,
17 is informed and alleges as follows:

18 1.

19 The Complainant, a Deputy Real Estate Commissioner of the State of California,
20 makes this Accusation against Respondent in her official capacity.

21 2.

22 Respondent EUGENE KOCHERGA (hereinafter “Respondent”), is presently
23 licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
24 California Business and Professions Code (hereinafter “the Code”) as a real estate salesperson.

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27 ¹ Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate (“Bureau”). All references to the agency herein will be to the Bureau.

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3.

At all times mentioned herein, Respondent was and is licensed by the Bureau of Real Estate ("Bureau") as a real estate salesperson. Respondent was first licensed as a real estate salesperson in 2003. At all times material, Respondent was employed by Willis Allen Real Estate as his supervising broker of record

4.

On or about April 19, 2011, Respondent entered a listing agreement with Christina R. ("Seller") to sell her residence located on Cherry Avenue in Imperial Beach, CA ("Subject Property"). Seller prepared the Subject Property for showing, and it was listed on the MLS on May 6, 2011.

5.

Respondent received an offer from Karen and Hayden J. ("Buyers") at about \$36,000 under the full listing price, on the morning of May 9, 2011. That day, Respondent discussed the offer with Seller, who agreed to submit a counter-offer for the full listing price. Respondent transmitted Seller's full price counter-offer, which he signed on her behalf.

6.

On the evening of May 10, 2011, Seller and Respondent met in person, and Seller signed a complete set of transaction documents.

7.

On the morning of May 11, 2011, escrow was opened. That afternoon, Seller sent Respondent a text asking him to cancel the transaction due to an unexpected change in her personal circumstances. On the evening of May 11, 2011, Respondent spoke to Buyer's agent to inform her that his client wished to cancel the transaction. Buyer's agent requested that Respondent send her written notice. She indicated, however, that she thought that her clients had an executed agreement and that they would not agree to cancel the transaction.

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8.

On the morning on May 12, 2011, Buyer’s agent submitted the Deposit to escrow. At noon, the escrow officer emailed Respondent a copy of the Earnest Money Deposit Receipt. The thread of email conversations between Respondent and the escrow officer was as follows:

Escrow Officer: “.Eugene- have you had a chance to review the draft escrow instructions? Is all OK to send out? Please advise. Also, need a mailing address for the Seller.”

Respondent: “Looks good, go ahead and send out.”

Escrow officer: “OK, just need the Seller’s mailing address...”

Respondent: You can send it to my address [provides office address].

9.

After this exchange, on the afternoon of May 12, 2012, Respondent sent Buyer’s agent an email explaining Seller’s change in circumstances and that she wanted to cancel the transaction. Respondent did not send a copy of this email, or any other written or verbal communication to the escrow officer.

10.

The first written notice Respondent provided to escrow that his client did not want to Sell the property was received by escrow on June 2, 2013, after Seller had retained legal counsel.

11.

The conduct, acts and/or omissions set forth above constitutes grounds to suspend or revoke Respondent’s real estate salesperson license pursuant to Code Section 10177(g) for negligence in failing to timely submit written cancellation instructions to escrow.

12.

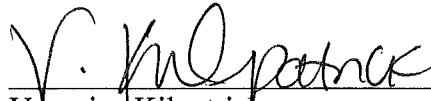
Business and Professions Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the commissioner may request the administrative law judge to direct a licensee found to have

1 committed a violation of this part to pay a sum not to exceed the reasonable costs of the
2 investigation and enforcement of the case.

3 WHEREFORE, Complainant prays that a hearing be conducted on the
4 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
5 disciplinary action against all license(s) and license rights of Respondent under the Real Estate
6 Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation
7 and enforcement as permitted by law, and for such other and further relief as may be proper
8 under other provisions of law.

9 Dated at Los Angeles, California

10 this 30 day of October, 2013.

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14 _____
15 Veronica Kilpatrick
16 Deputy Real Estate Commissioner
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20 cc: Eugene Kocherga
21 Marloz Financial Inc.
22 Veronica Kilpatrick
23 Sacto.
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