FILED

JUL 12 2016

BUREAU OF REAL ESTATE

By [signature]

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of HOLLY A. WU, Respondent.	CalBRE No. H-04768 SD OAH No. 2016020385

DECISION

The Proposed Decision dated June 08, 2016, 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.

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

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. 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. 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 AUG 02 2016.

IT IS SO ORDERED July 8, 2016

REAL ESTATE COMMISSIONER

[signature]

WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: HOLLY WU, Respondent.	Case No. H-04768 SD OAH No. 2016020385

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Diego, California, on May 12, 2016.

Cheryl D. Keily, Real Estate Counsel, represented complainant, Veronica Kilpatrick, a Supervising Special Investigator, Bureau of Real Estate, Department of Consumer Affairs, State of California.

Holly Wu, respondent, appeared and represented herself.

The record remained open for two weeks to permit Ms. Wu to introduce documents regarding her inability to pay costs and complainant to respond.[1] The record closed, and the matter was submitted on May 26, 2016.

ISSUES

Did Ms. Wu engage in activities requiring her to be licensed as a real estate broker or supervised by a licensed broker? If she did, what is the appropriate discipline to be imposed? Should costs be awarded to the bureau?

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[1] Complainant's letter in response to Ms. Wu's documents was marked and received as Exhibit 9. Ms. Wu did not provide those documents to OAH.

CASE SUMMARY

Ms. Wu engaged in activities requiring her to be licensed as a real estate broker or supervised by a licensed broker. She was not licensed as a broker, and the company for which she worked was not licensed by the bureau. In 2014, Ms. Wu was disciplined for performing real estate broker activities when she was not a licensed broker. Based on Ms. Wu's prior discipline and the facts presented here, the appropriate discipline is revocation. Given Ms. Wu's financial circumstances, and the revocation of her license, costs will not be awarded to the bureau.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 29, 2015, complainant signed the accusation in her official capacity. The accusation alleged that Ms. Wu, a licensed real estate salesperson, engaged in acts requiring a real estate broker's license, performing mortgage loan modification services, but was not licensed as a broker nor employed by a broker on whose behalf the activities were performed. Complainant requested that respondent's real estate salesperson's license be disciplined and costs be awarded.

The accusation and other required jurisdictional documents were served on Ms. Wu, who timely filed a notice of defense.

Ms. Wu's License

2. On February 27, 2006, the bureau issued real estate salesperson license number 01736346 to Ms. Wu. Ms. Wu's license is current and expires in 2018.

Prior Discipline

3. In 2014, after filing an accusation in Case Number H-04605, the Commissioner suspended Ms. Wu's license for 90 days, ordered her take and pass the Professional Responsibility Examination, and pay restitution. Ms. Wu complied with those terms and conditions, and her suspension terminated in December 2014.

Of significance, in that matter Ms. Wu performed real estate broker activities when she was not a licensed broker. The non-licensed activities Ms. Wu performed in that matter were mortgage loan modification services and collecting advance fees.

Background Facts

4. Ms. Wu is employed by TriCastle Realty, Inc., a licensed broker, where she works part time. TriCastle was not involved in the activities alleged in this accusation.

5. At all times alleged herein, Ms. Wu also worked for SHLC Holdings LLC, dba Secure Horizons Investment Counselors and Universal Relief Advocacy Organization (SHLC). Neither SHLC, nor any of the affiliates listed as dbas, were licensed by the bureau. SHLC performed mortgage loan modification and foreclosure services, advertising to potential consumers. SHLC was required to be licensed by the bureau to perform the services it advertised.

6. F.C. saw an advertisement and hired SHLC to modify her mortgage. The bureau introduced F.C.'s declaration pursuant to Government Code section 11514. Ms. Wu did not object and the declaration was received as though F.C. had testified at this hearing. F.C. declared that in October 2013, after contacting SHLC, she was referred to Ms. Wu who told F.C. that they would be in weekly contact, asked F.C. for various financial documents, and told F.C. that SHLC would work with F.C.'s lender to get F.C.'s mortgage loan modified. F.C. agreed to a monthly deduction from her bank account for that service and spoke with Ms. Wu on a regular basis. However, after three months, F.C. became worried because nothing had been done to modify her mortgage and she discovered that she should not be paying a fee for a mortgage modification. F.C. contacted the authorities.

7. Attached to F.C.'s declaration were the agreements she executed with SHLC and the authorizations allowing SHLC to contact F.C.'s lender. The documents demonstrated that SHLC was engaging in business that required licensure from the bureau.

8. E-mails between Ms. Wu and F.C. detailed the financial documents Ms. Wu requested in order to perform mortgage loan modification services for F.C.

9. In response to the bureau's inquiry, Ms. Wu submitted a written explanation of the services she performed at SHLC. She asserted that she was not engaging in unlicensed activities because she did not perform any "transactions," as she defined the term: "real estate deals." Ms. Wu's letter admitting to the counseling activities she performed supported complainant's assertion that she was performing services requiring her to be, or be supervised by, a licensed broker.

Witness Testimony

10. Chuck Manley, the bureau's special investigator, testified about the interviews he conducted and documents he collected as part of his investigation. He described the work that Ms. Wu performed and testified that it required her to be licensed as a broker or be supervised by a licensed broker. However, neither SHLC nor Ms. Wu was licensed by the bureau as brokers. Based upon his investigation, Mr. Manley determined that Ms. Wu violated bureau laws and regulations.

11. Jason Bernabei works with Ms. Wu at TriCastle. Ms. Wu is a single mom, is the sole support of her family, and performs a few real estate deals each year. He and Ms. Wu have co-listed properties together. Mr. Bernabei was extremely complimentary of Ms. Wu but admitted he was "not privy to the ins and outs of what went on" at SHLC. He

testified that Ms. Wu told him she had inquired if she needed "to hang her license" at SHLC, but they told her she did not because she was not performing licensed activities. Mr. Bernabei provided extremely favorable testimony for Ms. Wu, but admitted that he and Ms. Wu have several deals that are in "critical stages" and if her license is revoked, it will cost him a lot of money. At one point in his testimony, Mr. Bernabei acknowledged, "I am biased." As such, because of his bias and his lack of knowledge regarding any of the substantive facts at issue, his testimony was not persuasive.

12. Ms. Wu's testimony changed over time and was disconcerting. She admitted that she counselled clients about their finances, but claimed she was merely talking to them about their situation; she denied that she was performing loan modifications. This testimony was questionable given the contracts the SHLC clients signed and Ms. Wu's e-mails to F.C. Moreover, although Ms. Wu initially claimed that she had concerns about SHLC's dealings and left because of those concerns, as her testimony evolved, it became clear that she continued to work for SHLC despite her growing concerns, and remained employed until the bureau contacted her. She did not leave of her own accord as she originally claimed, but, instead, she remained employed until authorities intervened.

Moreover, Ms. Wu knew that the consumers she was counselling had been promised mortgage loan modification services and questioned her SHLC bosses about that fact, but still continued her employment at SHLC. The longer Ms. Wu testified, the more she appeared a willing participant in this scheme. She failed to appreciate that, as the license holder, she was required to comply with the bureau's laws and regulations. Moreover, Ms. Wu did not offer any testimony demonstrating that she had learned anything from her 2014 discipline. It was very disconcerting that the facts of that case involved performing mortgage loan modifications without a broker's license, as did the charges in this case.

Costs of Investigation and Enforcement

13. A certification of investigative costs and a declaration prepared by complainant's attorney were introduced that established that investigative costs totaled $2,886.20 and enforcement costs totaled $934.50. The documents accompanying the cost declarations set forth the time spent on each task, the rate billed, and the tasks performed. Total reasonable costs of investigation and enforcement are determined to be $3,820.70.

14. Ms. Wu submitted documents to the bureau in support of her testimony of her inability to pay costs. She does not work full time as a real estate salesperson, only closing a few deals each year. As she is a single mother and the sole financial support of her family, imposing costs would cause an undue hardship.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

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

Burden and Standard of Proof

2. In an action seeking to impose discipline against the holder of a real estate 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

3. Business and Professions Code section 10130 prohibits individuals from engaging in an unlicensed activity.

4. Business and Professions Code section 10131 defines those activities which constitute performing the duties of a real estate broker. Counselling consumers regarding mortgage loan modifications are real estate broker activities and require licensure.

5. Business and Professions Code section 10131.2 defines those activities which constitute performing the duties of a real estate broker. Collecting an advance fee for performing certain services is a real estate broker activity and requires licensure.

6. Business and Professions Code section 10177, subdivision (d), authorizes the bureau to suspend or revoke a license when a licensee engages in conduct that violates the real estate law. Subdivision (g) authorizes the bureau to suspend or revoke a license when a licensee's conduct demonstrates negligence. Subdivision (j) authorizes the suspension or revocation of a real estate license for conduct that constitutes fraud or dishonest dealing.

7. Business and Professions Code section 10106 authorizes the bureau to seek its investigation and enforcement costs.

Applicable Regulations

8. California Code of Regulations, title 10, section 2841, provides that a non-licensed individual "may not provide counselling or advice" and requires an employee to be under the "control, direction, and supervision" of a real estate broker.

Cause Exists to Impose Discipline

9. Cause exists under Business and Professions Code sections 10130, 10131, 10177, subdivision (d), and California Code of Regulations, title 10, section 2841, to impose discipline against Ms. Wu's real estate salesperson's license because clear and convincing evidence established that when employed at SHLC, she counseled consumers regarding mortgage loan modifications, an activity requiring a broker's license or requiring that she work under the direction of a licensed broker. Ms. Wu did not have a broker's license and SHLC was not licensed by the bureau when she counselled clients. Ms. Wu's actions violated the real estate law.

Moreover, Ms. Wu was disciplined in 2014 for performing mortgage loan modifications without a broker's license. Given that prior discipline, it was incumbent upon her to ensure that she was not performing unlicensed activities when hired by SHLC. Although she had concerns, she did little, if anything, about them. Ms. Wu appears to have learned nothing from her prior discipline and her testimony was troubling. As such, public protection requires revocation.

Cause Does Not Exist to Impose Discipline

10. Cause does not exist under Business and Professions Code section10131.2, 10177, subdivisions (g) and (j), to impose discipline as complainant did not establish by clear and convincing evidence that Ms. Wu collected advance fees in exchange for performing mortgage loan modification services, committed negligence, or engaged in fraud or dishonest dealings. While it is true that Ms. Wu provided counseling services, she was not involved with the "business end" of the company and did not collect fees from clients.

The Award of Reasonable Costs

11. Investigation and enforcement costs totaled $3,820.70. Complainant provided declarations and supporting documentation to support the costs. Business and Professions Code section 10106 authorizes the bureau to seek reasonable costs of the investigation and enforcement against a licensee who violated the real estate law. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, a case which analyzed the award of costs under a similar provision, set forth four factors to be considered when evaluating costs: (1) Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments.

Applying those factors here, Ms. Wu had a subjective good faith belief in her position, albeit an incorrect one, and she did raise a colorable challenge to the causes alleged against her. Most persuasively, given her financial situation, the fact that she is a single mother and sole source of financial support for her family, plus the fact that her license is being revoked, no costs shall be awarded because doing so would cause an undue hardship.

ORDER

All licenses and licensing rights of respondent Holly Wu under the Real Estate Law are revoked.

No costs are ordered.

DATED: June 8, 2016

DocuSigned by:

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MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings