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AUG 18 2022

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE No. H-05217 SD
)	
CARI ANN DROLET,)	
)	OAH No. 2021120886
Respondent.)	

NOTICE

TO: CARI ANN DROLET, Respondent, and FREDERICK W. PFISTER, her Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 27, 2022, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 27, 2022, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Tuesday, May 24, 2022, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Tuesday, May 24, 2022, at the Los Angeles

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1 office of the Department of Real Estate unless an extension of the time is granted for good cause
2 shown.

3 Written argument of complainant to be considered by me must be submitted within
4 15 days after receipt of the argument of respondent at the Los Angeles Office of the Department of
5 Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 8.3.22.

7 DOUGLAS R. McCAULEY
8 REAL ESTATE COMMISSIONER

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10 Douglas R. McCauley
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**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation Against:

CARI ANN DROLET, Respondent

Agency Case No. H-05217 SD

OAH No. 2021120886

PROPOSED DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter via video and teleconference on May 23 and 24, 2022, due to the ongoing COVID-19 pandemic.

Diane Lee, Staff Counsel, represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate (department), State of California.

Frederick W. Pfister, White and Bright, LLP, represented respondent, Cari Ann Drolet.

The matter was submitted on May 24, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent Cari Ann Drolet became licensed as a real estate salesperson, License No. 01823385, on October 1, 2007. On August 24, 2018, she became registered with The Edgar Fine Group, Inc., which changed its name to West Residential, Inc. doing business as Lotus Realty Group (Lotus Realty.) Ms. Drolet's salesperson license expires on September 8, 2023.

2. On November 24, 2021, complainant signed the first amended accusation in her official capacity. The first amended accusation alleged causes for discipline of material misrepresentation, fraud and dishonest dealing against respondents Ms. Drolet and West Residential, Inc., and a cause for discipline involving broker supervision against respondents West Residential, Inc. and Michael West, individually and as designated officer of West Residential, Inc. Complainant requested costs of investigation and enforcement. At the start of the hearing, complainant's counsel moved to amend the first amended accusation as follows: Page 5, paragraph 13, line 4, strike the name "Daniel T." and replace with "Kyle K.," and paragraph 15, lines 10 and 11, strike the words "REIG Asset Management, LLC sold the Property" and replace with the words "the property was sold." Ms. Drolet did not object to the amendments and complainant's motion was granted. The first amended accusation was amended by interlineation.

3. All three respondents entered a notice of defense. On May 3, 2022, respondents West Residential, Inc. and Michael West entered into a Stipulation and Agreement with the department. Therefore, the second cause of discipline was not

considered at hearing or in this decision. All references to respondent are to Ms. Drolet.

Complainant's Evidence

TESTIMONY AND DECLARATION OF KYLE KLECKNER

4. The following findings is from Klye Kleckner's testimony and his written declaration. Mr. Kleckner is a high school principal in the San Francisco Bay area. His father and stepmother owned a house in Oceanside and were preparing to move to assisted living. Mr. Kleckner needed to sell their home to provide for their care, so money was his main concern. He established a trust and became the trust administrator. He spoke with Dawn Lesicko of Caring Transitions and hired a care manager to assist with the transition.

5. On June 16, 2019, Mr. Kleckner signed a residential listing agreement (RLA) with Ms. Drolet of Lotus Realty. He met with Ms. Drolet once in person to discuss the terms of the RLA. The property was listed for a range of \$349,999 to \$390,000. The RLA included a disclosure and consent of the seller to an agent's representation of both a buyer and seller, and a paragraph titled "Dual Agency." Mr. Kleckner acknowledged that he did read the disclosure agreement but he "didn't comprehend" from what he read that Ms. Drolet may represent both the buyer and seller, "and she didn't explain."

6. On June 27, 2019, Mr. Kleckner received an offer for \$344,000. The prospective buyer obtained a home inspection report, which revealed a crack in the foundation. The offer was withdrawn. An offer for \$325,000, received on July 10, 2019, was withdrawn due to the foundation issues. A third offer was received on July 19,

2019, for \$319,000. The buyer obtained her own inspection report and an estimate of \$28,154 for foundation repairs. She withdrew her offer on July 29, 2019.

Mr. Kleckner was surprised to learn of the foundation issues because this had not been revealed in his home inspection report. After a discussion with Ms. Drolet, he asked her to disclose the foundation issues to all potential buyers.

7. On August 1, 2019, at 12:36 p.m., Ms. Drolet sent him a Residential Purchase Agreement (RPA) from REIG Asset Management, Inc. (REIG) for \$220,000. Mr. Kleckner and Ms. Drolet had discussed the offer, but he did not recall if he had already told her that he wanted to accept the offer before he received the RPA. He signed the offer on August 1, 2019, at 2:36 p.m. The RPA stated that Ms. Drolet represented the buyer and seller, and she signed the agreement as both buyer and seller. Mr. Kleckner insisted that although he signed the RPA, he did not understand that she was representing both the buyer and seller. He said, "I thought she would highlight the important parts (of the RPA.)"

8. On August 9, 2019, he received an amendment to the escrow instructions, wherein SoCal Metro Holdings LLC (SoCal) was substituted as buyer in place of REIG. Mr. Kleckner "didn't really understand" the amendment but he signed it. He did not contact Ms. Drolet. He received the final Master Settlement Statement prior to close of escrow on August 19, 2019.

9. After escrow had closed, Mr. Kleckner was contacted by Daniel Talman, a real estate broker and investor. Mr. Talman said that he had submitted "multiple" and higher offers for the property. He showed Mr. Kleckner his written offer for \$270,000 dated July 24, 2019, and a text message chain between Mr. Talman and Ms. Drolet. Mr. Kleckner had never heard of Mr. Talman prior to this call.

10. In his April 8, 2020, declaration to the department, Mr. Kleckner wrote that Ms. Drolet never presented him with Mr. Talman's July 24, 2019, written offer of \$270,000; she represented to him that the highest offer received had been \$220,000; and she failed to communicate to him that she would be a dual agent. He wrote, "She didn't communicate to me verbally that she represented both." He felt that he "had been taken for a ride." In October 2020 he signed a settlement agreement with Ms. Drolet.

11. On cross-examination, he was shown a text he sent to Ms. Drolet on July 30, 2019, at 10:02 a.m., where he wrote: "Did the agent you mentioned pass on the house?" He was asked what he meant by "the agent," and he responded, "nothing specific." He did not recall getting information on an offer or possible offer before he received something in writing.

Testimony and Declaration of Daniel Talman

12. Daniel Talman has been licensed with the department since 1995 and has been a broker since 1998. He has bought and remodeled more than 2,000 properties since 2008. He saw Mr. Kleckner's property on the Multiple Listing Service (MLS). He prepared and signed an RPA for \$270,000 and emailed it to Ms. Drolet at 3:54 p.m. on July 24, 2019. He spoke to Ms. Drolet on the phone but never met with her. The buyer was Golden Gate Realty & Investment (Golden Gate), a company owned by Mr. Talman's wife. Mr. Talman signed the RLA on behalf of Bankers Hill Capital, Inc. By its terms, the RPA was to expire on July 25, 2019, at 7:00 p.m.

13. The following is a text message exchange between Ms. Drolet and Mr. Talman between July 29, 2019, and August 1, 2019:

- July 29, 2019, 10:09 a.m.

Mr. Talman sent a text to Ms. Drolet asking what the seller had decided regarding the July 24, 2019, offer. Ms. Drolet responded, "We have not fell out yet." He understood this to mean that the property was in escrow. He asked why the property was listed in active status on the MLS. In his experience, if a property is in escrow, it is no longer listed as active on the MLS.

- July 29, 2019, 12:37 p.m.

Ms. Drolet: "We just got foundation report. Buyer backed out. I will send u the report."

Mr. Talman: "What property please as this is a new phone."

Ms. Drolet: "Goldenridge" and "Just sent. Let me know if u want to proceed."

- July 30, 2019, 9:31 a.m.

Ms. Drolet: "Hi did u have time to look at report. Do I [*sic*] want to proceed. Let me kow [*sic*] so I can present."

Mr. Talman: "Waiting to hear back from my engineer and concrete guys to get an idea of the cost to repair."

Ms. Drolet: "After looking at the reports I sent you there is a detailed proposal for cost. Did you not see it."

Mr. Talman: "Yes 28k which throws my offer out the door as I also have another 27k in rehab."

- July 30, 2019, 6:16 p.m.

Mr. Talman: "I'll do it at \$240k This report is now a disclosure issue for me even if I go with another contractor."

Ms. Drolet: "We have a few other investors looking. Put in your highest and best."

- August 1, 2019, 10:15 a.m.

Mr. Talman: "Will \$240k and all contingencies removes [*sic*] with offer get it done as I will not be assigning it as other investors will attempt it ask [*sic*] for credit for repairs as your last buyer did."

Ms. Drolet: "We have decided to go with another offer. Thank you."

14. Mr. Talman never told Ms. Drolet verbally or in writing that he was no longer interested in the property. After his initial offer, he learned of the foundation issues and then texted his offer of \$240,000. Texts are common in real estate. Ms. Drolet did not tell him that she would not entertain his text offer. He contacted the department and filed a complaint against Ms. Drolet "because I don't like dishonesty."

15. Mr. Talman's text messages with Ms. Drolet were all "an extension of my July 24, 2019, offer." He did not recall if he relayed this to Ms. Drolet. He explained that after he had submitted the offer with no response, he and Ms. Drolet were "negotiating a continuance of the July 24, 2019, offer." The offer was still pertinent "because our intent was to continue the offer even though it had not been accepted." "We used this offer to negotiate a price," and then we "hammer out a price and contingency removal." This explanation made little sense and was not consistent with the facts. Their text exchange was not a negotiation of price but rather Mr. Talman

inquiring about what price may or may not be accepted and Ms. Drolet asking him to "put in your highest and best."

16. In a declaration to the department, Mr. Talman wrote that from Ms. Drolet's text at 10:15 a.m. on August 1, 2019, that they had gone with another offer, he "believed that the seller had signed and accepted another offer." He learned from Mr. Kleckner that Mr. Kleckner signed the RPA "between 1-2 p.m." on August 1, 2019.

Mr. Talman learned that the property sold for \$220,000, and the buyer resold the property the same day for \$287,500. He reached out to Mr. Kleckner and told him that he (Mr. Talman) had offered more for the property. Mr. Kleckner said that he had not been presented with offers of \$270,000 or \$240,000. Mr. Talman did not inform Mr. Kleckner that the \$270,000 offer had expired and that he had only inquired about an offer of \$240,000, but he had not submitted an offer.

17. On cross-examination, Mr. Talman said that Golden Gate "is not my company," but that his wife is the "sole owner and shareholder." He acknowledged that he never submitted a new written offer. When Ms. Drolet asked for his "highest and best" (on July 30, 2019,) he said, "I thought she meant over my \$270,000 offer." This statement was not credible. He was aware of the foundation issues and an estimate for \$25,000 to do the repairs so it would make no sense that Ms. Drolet would be looking for him to offer more than he had in his original offer.

18. He acknowledged that his July 24, 2019, written offer expired because it was not accepted by 7:00 p.m. on July 25, 2019.

19. In his November 21, 2019, letter to the department investigator, Leah Maniss, Mr. Talman wrote: "The agent told me via text not to submit the \$240k offer w/all contingencies removed because she states in the text at 10:15am, it is already

sold.” This was a misstatement of Ms. Drolet’s August 1, 2019, text message. When this misstatement was pointed out, he responded, “She implies it.”

Mr. Talman acknowledged that he had no evidence to support his statement that Ms. Drolet was aware the property would immediately be resold, and he has no evidence that she received money or listings in connection with the sale to the “end buyer.” He did not regret that he did not submit a second written offer.

Testimony of Ms. Drolet

20. Ms. Drolet received her real estate license in 2007. She has never been disciplined by the department. She has worked for Lotus Realty since 2009. She has a health care background and has worked in skilled nursing facilities. Her real estate career has been focused on the senior community. Her business, Caring Transitions, assists seniors with downsizing, cleanup, estate sales, locating an assisted living facility, moving, and selling their property. Helping seniors is her passion.

She met Mr. Kleckner through Dawn Lesicko, relocation specialist at Caring Transitions. Mr. Kleckner hired Ms. Drolet to sell the property in Oceanside. They met in person and reviewed the RLA. Ms. Drolet suggested obtaining a home inspection report and Mr. Kleckner agreed. She explained to him the possibility of her representing both the buyer and seller in the transaction. He signed the RLA where he consented to that representation. They both signed the RLA using DocuSign.

21. On June 27, 2019, he received an offer from S.B. for \$344,000. Ms. Drolet sent an email and spoke on the phone with Mr. Kleckner. He accepted the offer, and initialed and signed via DocuSign. The prospective buyer’s home inspection revealed a cracked slab. Mr. Kleckner’s home inspection had found no evidence of a cracked slab. Ms. Drolet said, “We decided to cancel.” She and Mr. Kleckner discussed the

withdrawal of offers and he asked that she provide the inspection report to all prospective buyers.

22. On July 10, 2019, an offer was received from L.B. & P.B. for \$325,000. Ms. Drolet showed the prospective buyers the inspection report. She showed the offer to Mr. Kleckner but before he could accept, the prospective buyers withdrew their offer.

23. On July 19, 2019, an offer of \$319,000 was received from K.F. K.F. obtained her own inspection report along with an estimate of \$28,154 to repair the foundation. On July 29, 2019, she withdrew her offer.

24. Ms. Drolet and Mr. Kleckner discussed the issue of the withdrawn offers. She suggested looking at investors rather than "traditional" buyers. She did not recall if she put this conversation in writing. Mr. Kleckner wanted her to start contacting investors.

25. On July 24, 2019, Ms. Drolet received an RPA from Mr. Talman and Golden Gate Realty for \$270,000. Ms. Drolet was aware that Mr. Talman specialized in "investor flip properties." The offer was set to expire on July 25, 2019, at 7:00 p.m. Mr. Talman had not yet received the inspection report.

Ms. Drolet did not send the offer to Mr. Kleckner because he was under contract with the offer he had received on July 19, 2019, and he would have not been able to accept it. It would have been unethical to accept Mr. Talman's offer at that time. Ms. Drolet acknowledged that she should have forwarded the offer to Mr. Kleckner regardless of any reasons she may have had for not doing so. She did inform Mr. Kleckner that she was in communication with "an agent." She was referring to Mr. Talman but did not provide his name.

26. On July 29, 2019, at 10:09 a.m. and after his offer had expired, Mr. Talman sent a text to Ms. Drolet and asked what the seller decided on the offer. She responded that the property had not fallen out of escrow. At 12:37 p.m., she texted him that the buyer had backed out at 12:30 p.m. She asked that he let her know if he wanted to proceed. She sent him a copy of the inspection report.

27. On July 30, 2019, she followed up with Mr. Talman at 9:31 a.m. She asked if he wanted to proceed, and to let her know so she could present an offer.

At 10:02 a.m. she received this text from Mr. Kleckner: "Did the agent you mentioned pass on the house?" She responded that the agent was still interested but she was sending out to others just in case. She did not discuss Mr. Talman's texts with Mr. Kleckner because she had no written offer.

At 6:16 p.m. Mr. Talman texted that he "would do it for \$240k." She said she had a few other investors looking and asked that he put in his highest and best.

28. Ms. Drolet could not accept his text statement that "I'll do it at \$240k" because he provided no other terms, no escrow time, no contingencies. He never said that this was "an extension" of his expired offer. He never submitted a written offer for her to present to Mr. Kleckner to consider. She heard nothing on July 31, 2019.

29. John Swain was a representative of REIG. She had previously interacted with him at REIG when she was managing a different firm. He reached out to her and asked if she had any properties. He asked her to prepare an offer from REIG for \$220,000, which she did. She discussed the offer with Mr. Kleckner, and he said he wanted to accept the offer.

30. On August 1, 2019, at 10:15 a.m., Mr. Talman wrote: "Will 240 and all contingencies removed get it done" Ms. Drolet responded: "We have decided to go with another offer." She said this because Mr. Kleckner verbally accepted REIG's offer and she did not have a written offer from Mr. Talman.

31. According to DocuSign records, REIG's offer was sent to Mr. Kleckner at 12:36 p.m. and was signed at 2:36 p.m. At this time, Ms. Drolet was not aware that REIG was planning to wholesale the property. She found out later that on August 9, 2019, Mr. Kleckner had signed an amendment to the escrow instructions, which removed REIG as buyer and assigned the RPA to SoCal Metro Holdings, LLC (SoCal). Mr. Kleckner did not tell her that he had signed the amendment. He could have refused to sign. The amendment was never sent to her. Escrow did not inform that there was a second sale of the property on the same day. Mr. Kleckner remained her client through close of escrow, and all escrow documents should have gone through her. Ms. Drolet said, "I can't say it is illegal, but I believe it is unethical." After this transaction, she stopped working with REIG.

32. Michael West completed the walk-through inspection. He signed the Residential Disclosure for Lotus Realty as the representative of the buyer and seller, Mr. Kleckner signed as seller, and Patrick Clark signed on behalf of SoCal, the buyer. Escrow closed on August 19, 2019. Ms. Drolet did not receive a copy of the Final Master Settlement Statement until after escrow closed.

33. After she told Mr. Talman that Mr. Kleckner was accepting another offer, Mr. Talman began to call her "very aggressively." He contacted her during escrow and said he wanted to "back in" to the transaction. She told him not to contact her again.

She believed he contacted Mr. Kleckner after escrow closed. She received a letter from Mr. Kleckner's attorney who claimed that she withheld offers and she had a monetary gain from the second sale. She signed a settlement agreement with Mr. Kleckner and returned her entire commission of \$13,200 to him. Although she did not agree, if he felt she did not represent him well, she wanted him to have the money.

34. Since this incident, Lotus Realty has changed their practice. They no longer represent both a buyer and seller in a transaction, and no longer receive commissions up front. Ms. Drolet submits all offers to her clients, even if an offer has expired. She saves all text messages and emails.

35. On cross-examination, Ms. Drolet acknowledged that she kept the property active on MLS during escrow so she may be able to get other offers in the event the property fell out of escrow.

When she told Mr. Talman that they had decided to go with another offer, she did not say that the transaction had been completed. Mr. Kleckner had an RPA and had agreed to sign.

Ms. Drolet acknowledged that she should have sent Mr. Talman's July 24, 2019, offer to Mr. Kleckner. She did not relay Mr. Talman's text inquiries to Mr. Kleckner because she did not have an offer and she felt she was best representing him by not relaying inquiries. She does not rely on investor inquiries. There is no legal requirement to relay an inquiry to a client, but she said that ethically she should have relayed these to Mr. Kleckner

By representing both buyer and seller, Lotus Realty received six percent of the sale price or \$13,200. If she had only represented the seller, they would have received four percent or \$8,800.

Character Witnesses

BRYAN DEVORE

36. Bryan Devore is a real estate agent for Berkshire Hathaway. He has been licensed for 19 years. He has had no real estate-related discipline. He knows Ms. Drolet as he does a lot of work with seniors. He described Ms. Drolet as honest, forthright, and very professional. He would refer clients to her. There is no competition between the two even though they are both real estate agents. He does not have first-hand knowledge of this transaction.

MICHAEL WEST

37. Michael West has been licensed as a real estate agent since 2009 and as a broker since 2013. He has no complaints (other than this one). He met Ms. Drolet when they worked together at Keller Williams in 2009. In 2019, he opened his own brokerage firm, Edgar Fund Group, now known as Lotus Realty. Ms. Drolet joined him in 2019. They have a good relationship. He and Ms. Drolet communicate daily. He "trusts her absolutely." She specializes in working with seniors transitioning from home to assisted living. She offers a complete array of services to take the stress off the client and their family. She is sincere and cares about doing a good job for her clients.

38. He was the supervising broker in this transaction. He conducted the site visit, took photographs of the property, and helped Ms. Drolet to get the property on the market. He was not initially aware of the problems with the condition of the property. The first buyer's inspection found foundation issues and he then learned there was a cracked slab. He was aware of Mr. Talman because he submitted an offer when Lotus Realty was in escrow. He was not aware of text messages between Mr. Talman and Ms. Drolet. Text messages are not offers. If there is no writing, there is

nothing to enforce. He was aware that Ms. Drolet was representing both the buyer and the seller. He believes what she did was fine. He was not aware that REIG was planning to assign the RPA. He learned this after it was done but before closing. He received no documents relating to the assignment. This type of transaction is not illegal. He did not see any red flags in this transaction.

39. He has made changes in his brokerage firm since this transaction. Although there is nothing wrong with dual agency, Lotus Realty will avoid dual representation as a company or Ms. Drolet as agent. Even if an offer has expired, we now present everything to the client.

JOHN SWAIN IV

40. John Swain IV sells health and life insurance, also works for Team GT Homes, an independent real estate investment company. He worked for REIG "briefly in 2019," and then 2020 and 2021. REIG bought and sold properties. Mr. Swain was an accusation manager and outsourced deals for REIG. He was REIG's point of contact on the purchase of Mr. Kleckner's property. He was aware that REIG's original intention was to rehab and resell the property. REIG's intentions changed, and they decided to "wholesale" the property, or purchase and resell the property before it closed escrow. He was not part of this decision. While he was working at REIG, they changed their business from flipping houses to wholesaling. The decision was made by their operations team. He did not tell Ms. Drolet because he did not know. He found out after the fact. Ms. Drolet would not have known of the wholesaling until after escrow closed. REIG did not usually tell the seller that they planned to assign their rights as buyer. Ms. Drolet stopped working with REIG at some point due to their change in strategy because she did not think they did the best for her clients. He has known Ms. Drolet

professionally and personally for “a few years.” He described her as “personable, caring and compassionate about the work she does.”

MEGAN SILVERMAN

41. Megan Silverman has worked in sales and marketing for Los Vias Del Norte, an assisted living center, for one and a half years. She has been in the “senior” industry for 10 years. She helps families when they are looking for a place for their family member. She has known Ms. Drolet for about seven years because they were both part of a senior networking group. They initially worked on a professional level and later became friends.

Ms. Silverman has recommended clients to Ms. Drolet’s real estate and other services, and Ms. Drolet has referred clients to Ms. Silverman to see if they “fit” at her facility. There is no compensation exchanged either way.

She described Ms. Drolet as honest and forthcoming. She is upfront about what she can and cannot do, and she is willing to refer clients if necessary. “I trust her judgement.” Ms. Silverman has never heard of anyone who has complained about or is unhappy with Ms. Drolet’s services. In fact, she has heard compliments about Ms. Drolet, most recently from a family who needed extensive work done on a condo, and Ms. Drolet gave them an advanced credit so the senior could move into a facility and the family could begin repair work sooner.

ELISA BEDINGFIELD

42. Elisa Bedingfield is marketing and admissions director at Ridgeview Health Center, which provides assisted living services for seniors. She meets with seniors and their families and shows the property. Prior to this position she worked in

a skilled nursing facility. She met Ms. Drolet about four years ago. Ms. Bedingfield will continue to refer clients to Ms. Drolet. There are no referral fees or commissions to each other. She described Ms. Drolet as honest, professional, loyal and genuine. She "wears her heart on her sleeve."

Cost of Investigation and Enforcement

43. Complainant submitted a Certified Statement of Investigation Costs of \$1,195.45, which included: Special investigator (SI) – \$1,117.85 (14.15 hours at \$79 per hour) and Supervising SI - \$77.60 (80 hours at \$97 per hour.) Complainant presented a Certified Statement of Enforcement Costs, reflecting that the department incurred costs of \$5,328.00 (55.5 hours at \$96 per hour) for the services of real estate counsel. These costs totaling \$6,523.45 are reasonable pursuant to Business and Professions Code section 10106.

Closing Arguments

COMPLAINANT

44. Complainant argued the following:

The ultimate question is whether Ms. Drolet met her fiduciary duty to Mr. Kleckner, under the civil code and the RLA. Ms. Drolet had a duty to disclose Mr. Talman's offer and the amount of money Mr. Kleckner could receive.

Ms. Drolet was caught in a lie. On August 1, 2019, at 10:15 a.m., Mr. Talman wrote that he would pay \$240,000 with no contingencies. Ms. Drolet should have pursued this so Mr. Kleckner could have made a decision. She did not. She then emailed REIG's offer to Mr. Kleckner. Mr. Kleckner had told her he wanted to accept. It was not until four hours later that Mr. Kleckner finally signed the RPA.

Ms. Dolet had a duty to tell Mr. Kleckner of the text messages as she knew he wanted more money. This was either negligence or incompetence, but he lost \$20,000. Mr. Talman's harassment of her indicated that he was serious about this transaction.

Complainant requests revocation of Ms. Dolet's license.

RESPONDENT

45. Respondent argued the following:

The accusation contains a single count – that offers were not presented to Mr. Kleckner. There was only one offer. The Statute of Frauds bars text messages as offers. Ms. Drolet accepts responsibility for her failure to convey the \$270,000 written offer to Mr. Kleckner.

There was no evidence to show that she knew of the resale. There was evidence to the contrary, confirmed by Mr. Swain who said she had no part in it. She regrets that she did not know because she would never have agreed or suggested REIG; and she regrets that she could not get Mr. Talman to put in an actual written offer.

Mr. Kleckner claims he did not read, or did not recall reading, the RPA. He thinks it was Ms. Drolet's responsibility to point out everything in the documents that was important. He signed a declaration that he was not aware of her dual representation. Mr. Talman insisted that "she knew" that the property would be resold. He claimed his texts were an offer, and then he said his texts were an extension of his expired offer. He told Ms. Maniss and Mr. Kleckner that he had in fact made an offer of \$240,000. This was not true.

Ms. Drolet regrets and accepts responsibility for her failure to relay the \$270,000 offer to her client, and requests that she be allowed to retain her license.

LEGAL CONCLUSIONS

1. The purpose of administrative proceedings involving the discipline of a professional 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, 855-857.) This is a heavy burden. It requires a finding of high probability; it is evidence so clear as to leave no substantial doubt, or evidence so sufficiently strong that it commands the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Applicable Disciplinary Law

3. Business and Professions Code section 10176, states in part:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade, or induce.

[¶] . . . [¶]

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

4. Business and Professions Code section 10177 states, in part, that the commissioner may suspend or revoke the license of a real estate licensee who has done any of the following:

[¶] . . . [¶]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

[¶] . . . [¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

[¶] . . . [¶]

(j) Engaged in any other conduct, whether of the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing.

5. The Statute of Frauds, Civil Code section 1624, provides that certain contracts are invalid, unless they are in writing and signed by the party to be charged or by the party's agent. Subdivision (d) states:

An electronic message of an ephemeral nature that is not designed to be retained or to create a permanent record, including, but not limited to, a text message or instant message format communication, is insufficient under this title to constitute a contract to convey real property, . . .

Applicable Case Law

6. It is a fundamental "requirement that a real estate licensee possess the qualifications of honesty and integrity." (*Golde v. Fox (1979) 98 Cal.App.3d 167, 177.*) This is because the real estate licensee acts in a confidential and fiduciary capacity and "those pursuing it should have in a particular degree the qualifications of 'honesty, truthfulness and good reputation.'" (*Ibid.*)

Evaluation of Causes for Discipline

7. Cause exists to discipline Ms. Drolet's license under Business and Professions Code section 10177, subdivisions (d) and (g), because she failed to inform Mr. Kleckner of Mr. Talman's offer of \$270,000. Ms. Drolet had a duty to inform Mr. Kleckner of all offers received.

8. Ms. Drolet's failure to inform Mr. Kleckner of the \$270,000 offer did not constitute a substantial misrepresentation or fraud or dishonest dealing under the provisions of Business and Professions Code sections 10176, subdivisions (a), (b), and (i) or 10177, subdivisions (d), (g), and (j). Ms. Drolet explained her reasoning in not sending the offer to Mr. Kleckner He was under contract with K.F. and he would not have been able to accept the offer. It would have been unethical for him to accept Mr. Talman's offer unless or until the transaction fell out of escrow. Mr. Talman's offer was received at 4:00 p.m. and was set to expire at 5:00 p.m. the following day. Although Ms. Drolet's explanation of her reasoning in no way justifies her action or inaction, it indicates that she had no intent as required for fraud, there was no misrepresentation, and no dishonest dealing. These allegations were not proven by clear and convincing evidence. Ms. Drolet acknowledged that regardless of any reasons she may have had for not doing so, she had a duty to present the offer to Mr. Kleckner.

9. Cause does not exist to discipline Ms. Drolet's license under Business and Professions Code section 10177, subdivisions (d) and (g). Ms. Drolet did not fail to inform Mr. Kleckner of Mr. Talman's offer of \$240,000, because Mr. Talman did not submit an offer for \$240,000. Instead, he sent inquiries via text. Per Civil Code section 1624, subdivision (d), text messages are not offers, and there was no legal requirement for Ms. Drolet to notify Mr. Kleckner of inquiries. Despite Ms. Drolet's requests over a period of several days, Mr. Talman failed to submit a written offer that could be presented to and considered by Mr. Kleckner.

Rehabilitation

10. Ms. Drolet has the burden of providing positive evidence that she has been rehabilitated. The department is not seeking to punish Ms. Drolet, but rather public protection is the department's highest priority in exercising its licensing,

regulatory, and disciplinary functions, and it is paramount to all other interests. (Bus. & Prof. Code, § 10050.1.)

Ms. Drolet continues to be actively involved in Caring Transitions where she works with seniors in the community. The testimony of four character witnesses reflected that Ms. Drolet is well respected in the community and her contributions and hard work are appreciated by many. Ms. Drolet acknowledged that she was wrong in not forwarding the \$270,000 offer to Mr. Kleckner, regardless of any reasons she may have had for not doing so. Lotus Realty has made changes in that they no longer represent both a buyer and a seller in a transaction, and they no longer receive commissions up front. Ms. Drolet submit all offers to her clients. She now saves all text messages and emails.

Ms. Drolet settled with Mr. Kleckner and returned her entire commission to him. She explained that even though she did not agree with his allegations, if he felt that she did not represent him well she wanted him to get his money.

Based on the totality of the circumstances and evidence provided, the public will be sufficiently protected by placing respondent on three years' probation, with appropriate terms and conditions.

Cost Recovery Analysis

11. Except as otherwise provided by law, 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 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.)

Zuckerman v. Board of Chiropractic Examiners (2002) 29 Cal.4th 32, sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include whether the licensee had a "subjective good faith belief" in the merits of his or her position, whether the licensee raised a "colorable challenge" to the proposed discipline, and the extent of the licensee's financial ability to make later payments. Further, full costs may not be assessed when a "disproportionately large investigation" was conducted given the circumstances of the case. Finally, the department should consider the public interest in regulating the targeted conduct.

The other two respondents stipulated and were not part of this hearing. Total cost of investigation and enforcement were \$6,523.45. Ms. Drolet's portion of those costs would be \$2,174.48. She successfully defended one of the two causes for discipline, and therefore her cost shall be \$1,050.00. By reason of the matters set forth above, and an analysis of the factors set forth in *Zuckerman, supra*, it is determined that assessing costs in the amount of \$1,050 is reasonable. Ms. Drolet shall reimburse the department this amount.

ORDER

All licenses and endorsements of respondent Cari Ann Drolet under the Real Estate Law are revoked; provided, however, that her real estate salesperson license shall be revoked, the revocation stayed, and a restricted license issued to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the issuance of such a restricted license and \$1,050 in investigation and enforcement costs within 90 days from the effective date of this Decision, unless otherwise ordered by the

department through a payment plan. The restricted license issued to respondent shall be subject to all the provisions of Business and Professions Code section 10156.7 and shall be subject to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The restricted license issued to respondent may be suspended prior to hearing by order of the commissioner in the event of respondent's conviction or plea of nolo contendere to a crime that is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by order of the commissioner on evidence satisfactory to the commissioner that respondent 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.

3. Respondent 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 and order.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the department certifying that:

(a) the employing broker has read the decision and order of the commissioner in this matter; and

(b) the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this decision and order, 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 fails to satisfy this condition, the commissioner may order the suspension of the restricted license until the respondent presents such evidence. The commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. During the period of restriction, respondent shall report any arrest to the board within 72 hours of the occurrence of the arrest, or if incarcerated following arrest, within 72 hours of release from incarceration.

Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested, and the

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name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATE: June 27, 2022

Marion Vomhof

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings