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DEPARTMENT OF REAL ESTATE

By R. Mas

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of

MOPINDER SINGH PEGANY,

Respondent.

Case No. H-5432 SAC

OAH No. 2010100414

DECISION AFTER REJECTION

Marilyn A. Woollard, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), heard this matter on June 16, 2011, in Sacramento, California. John W. Barron Counsel for the Department of Real Estate (Department), appeared on behalf of Complainant Tricia D. Sommers (Complainant), Deputy Real Estate Commissioner of the State of California. Respondent MOPINDER SINGH PEGANY (Respondent), was present throughout the proceeding, and represented himself.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would decide the case upon the record, the transcript of proceedings held on June 16, 2011, and upon any written argument offered by Respondent and Complainant. Complainant submitted argument.

1 I have given careful consideration to the record in this case, including the
2 transcript of proceedings of June 16, 2011. I have also considered the arguments submitted by
3 Complainant. The following shall constitute the Decision of the Real Estate Commissioner
4 (Commissioner) in this proceeding:

5 FINDINGS OF FACT

6 1. On December 23, 2004, the Department issued a real estate broker
7 license to Respondent. Respondent's license will expire on December 22, 2012.

8 2. Respondent does business as MBM Mortgage & Tax, MGM Real
9 Estate, MTM Realty, and My Tax and Mortgage. Respondent is also a Certified Public
10 Accountant (CPA).

11 3. On July 21, 2010, Complainant made, signed and filed an Accusation
12 against Respondent in her official capacity. Complainant alleged that, on March 17, 2009,
13 Respondent made a substantial misrepresentation to listing agent Michael Soares of Keller
14 Williams Realty when he submitted a Residential Purchase Agreement for the real property
15 located at 3407 Bertania Way, Sacramento, California (the property). Specifically, Complainant
16 alleged that, as part of the purchase offer, Respondent represented that he had an earnest money
17 check for \$5,000 from the prospective buyer in his possession when, in fact, Respondent did not
18 have the check in his possession. Escrow was cancelled on April 18, 2009, after the buyer was
19 unable to secure funding to purchase the property. Complainant alleged that Respondent's
20 conduct violated Business and Professions Code section 10176, subdivision (a), and that his
21 license was subject to revocation or suspension.¹

22 4. On August 12, 2010, Respondent filed his Notice of Defense. The
23 matter was set for an evidentiary hearing before an ALJ of the OAH, an independent
24 adjudicative agency of the State of California, pursuant to Government Code section 11500, et
25 seq.

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¹ Unless indicated otherwise, all statutory references are to the California Business and Professions Code.

1 5. On March 17, 2009, Zaheer Macy completed a California Residential
2 Purchase Agreement and Joint Escrow Instructions (Agreement) offering to purchase the
3 property from seller Countrywide Home Loans, Inc. (Countrywide) for \$320,000. Mr. Soares
4 was confirmed as the listing agent for the transaction, with Respondent/MTM Realty as selling
5 agent. In pertinent part, the Agreement provided:

6 INITIAL DEPOSIT: Buyer has given a deposit [earnest money] in the
7 amount of \$5,000 to the agent submitting the offer. . . by personal check. . .
8 which shall be held uncashed until Acceptance then deposited within 3
business days after Acceptance...with Escrow Holder...

9 6. On March 17, 2009, Respondent submitted Mr. Macy's offer to Mr.
10 Soares. Respondent's facsimile cover letter contained the following typed comments:

11 Please see the attached offer. Can you please confirm receipt of this
12 and POSSIBLY expedite this? Buyers are EAGER to move forward
with this offer. Thank you —

13 Included-
14 Purchase Agreement
15 Prequalification Letter EMO
16 Copy
Proof of Funds

17 The facsimile cover letter also contained a handwritten notation: "STRONG
18 BUYER —close in 30 days!"

19 The documents transmitted with this facsimile were Mr. Macy's completed
20 Agreement; a copy of Mr. Macy's \$5,000 check dated March 9, 2009, made payable to "Title"
21 for escrow (i.e., the EMO or earnest money offer copy); a loan prequalification letter from
22 Countrywide; and a "proof of funds" consisting of Mr. Macy's First Federal Bank statement for
23 the period January through February 2009, showing his ending balance of \$54,946.12.

24 7. On March 21, 2009, Mr. Macy and Countrywide signed a Real Estate
25 Purchase Addendum (Addendum) to their March 20, 2009 Real Estate Purchase Contract.
26 Pursuant to the Addendum, the \$5,000 earnest money deposit was to be delivered to Mr. Soares
27 within 24 hours.

1 8. Respondent did not expressly inform Mr. Soares or his client,
2 Countrywide, that he was in actual possession of Mr. Macy's check; however, the language of
3 the Agreement, quoted in Finding 5, expressly provides that the buyer had given Respondent a
4 \$5,000 deposit in the form of an earnest money check. Respondent's conduct of faxing a
5 copy of Mr. Macy's check to Mr. Soares with his offer substantially misrepresented the true
6 facts by implying that he was in possession of this check.

7 9. Respondent did not dispute the facts set forth in Findings 5 and 6. At
8 hearing, Respondent testified that he did not have Mr. Macy's \$5,000 earnest money check in
9 his possession when he submitted the Agreement to purchase the property to Mr. Soares, or at
10 any other time. Mr. Macy resided in Fayetteville, Arizona. Respondent had a copy of Mr.
11 Macy's check and he sent a copy of this check to Mr. Soares. Over the next several weeks,
12 Respondent and his assistants attempted unsuccessfully to obtain the check from Mr. Macy and
13 were told that it had been, or would be, mailed to them.

14 10. On April 16, 2009, Respondent's administrative assistant, Roxy Mustafa,
15 sent an email to Mr. Soares' assistant, Christy Spindler, indicating that "we have been having a
16 hard time collecting the deposit check from the buyer. It was said it had been mailed out a
17 couple of times already to us. . ." Ms. Mustafa further advised that the buyer had not received
18 loan approval and that it would be "best to cancel this transaction due to no loan approval."

19 11. On April 15, 2009, Mr. Soares filed a complaint with the department at
20 Countrywide's request. Mr. Soares indicated that the transaction for the sale of the property
21 went into escrow on March 23, 2009, but that Respondent had failed to place the earnest money
22 funds into escrow, and failed to return the mandatory disclosures required by contract. The sale
23 fell through and Countrywide never realized any money from Mr. Macy through
24 Respondent's office.

25 12. In his communications to the Department after the complaint was filed and
26 in his testimony at hearing, Respondent provided the following explanation for his conduct.

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1 Respondent rarely worked with out-of-state clients. Respondent believed that
2 Mr. Macy was the only out-of-state buyer with whom he had worked as a broker. His primary
3 means of communicating with Mr. Macy was by telephone and facsimile. At the time,
4 Respondent's typical practice was to obtain copies of all prospective buyers' earnest money
5 checks. Once their offers were accepted, Respondent would obtain the actual checks and
6 deposit them into escrow. If there was a problem, Respondent would go to the prospective
7 buyer and pick up the check. Mr. Macy had faxed Respondent a copy of his earnest money
8 check. Because Mr. Macy lived in Arizona, Respondent could not easily collect the check.
9 Instead, he and his assistant were informed by Mr. Macy several times that he had mailed the
10 check and that he would fly out and deliver the check. Mr. Macy eventually told Respondent
11 that he was not able to obtain a loan approval and the transaction should be cancelled.

12 Respondent also indicated that: (1) the transaction occurred during tax season,
13 when he was very busy as a CPA and not as focused on his broker transactions; and (2) an
14 assistant on whom he heavily relied in his real estate work was out of the office at the time due
15 to pregnancy complications.

16 13. Respondent testified that, since this incident, he has changed his
17 business practices. He now requires that all clients provide their earnest money checks to
18 him at the outset of a transaction, before he submits an offer on their behalf.

19 14. Respondent testified that he has worked as a licensed CPA since 1999 and
20 as a broker since 2004. Other than this isolated incident, Respondent has never had
21 complaints filed against him and his licenses have never been disciplined. There was no
22 evidence to contradict Respondent's testimony.

23 Respondent has taken courses in ethics and believes he understands his ethical
24 obligations as a broker; however, he is willing to take such a course if requested by the
25 department. He believes that this was a unique situation due to the out-of-state nature of the
26 prospective buyer and his hectic schedule at the time as described above. Respondent accepts
27

1 responsibility for his conduct and credibly testified about his changed awareness of his
2 obligations as a broker.

3 15. Respondent offered a June 8, 2011, letter signed by Mr. Macy which was
4 admitted and considered as permitted by Government Code section 11513, subdivision (d).²
5 Mr. Macy wrote that he had given Respondent a copy of his check but that, "unfortunately,
6 due to being out of state I never got around to mailing the check". Mr. Macy indicated he
7 intended to deliver the check personally but that he never did so because his loan was denied.

8 16. At hearing, department counsel agreed that Respondent's violation of
9 section 10176, subdivision (a), would be appropriately disciplined by suspension, with a thirty-day
10 actual suspension, an opportunity to buy out the suspension, and completion of an ethics course.

11 LEGAL CONCLUSIONS

12 1. In an Accusation seeking to revoke, suspend, or otherwise discipline
13 Respondent's professional license, the agency has the burden of proof to establish the allegations in
14 the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality*
15 *Assurance* (1982) 135 Cal.App. 3d 853, 856.)

16 2. Section 10176, subdivision (a), provides that the Commissioner may
17 investigate the actions of any person engaged in the business or acting in the capacity of a real
18 estate licensee within this state, and may "temporarily suspend or permanently revoke a real
19 estate license at any time where the licensee, while a real estate licensee, in performing or
20 attempting to perform any of the acts within the scope of this chapter has been guilty of any
21 of the following: (a) Making any substantial misrepresentation."

22 3. As set forth in the Factual Findings and Legal Conclusions as a whole,
23 Complainant met its burden of establishing that Respondent made a substantial misrepresentation
24 to Mr. Soares and to Countrywide when he forwarded Mr. Macy's Agreement/offer and a copy of
25 Mr. Macy's \$5,000 earnest money check. The Agreement expressly indicates that Respondent

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27 ² Government Code section 11513, subdivision (d), provides in pertinent part that "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions..."

1 had received the initial deposit check from Mr. Macy. This was not true. Respondent in no
2 way indicated to Mr. Soares that all he had in his possession was a copy of Mr. Macy's check.
3 Countrywide relied on Respondent's representation when it accepted the offer to purchase the
4 property. Cause, therefore, exists to revoke or suspend Respondent's license pursuant to
5 Section 10176, subdivision (a) of the Code.

6 4. Section 10175.2, subdivision (a), provides:

7 If the Real Estate Commissioner determines that the public
8 interest and public welfare will be adequately served by permitting
9 a real estate licensee to pay a monetary penalty to the department in
10 lieu of an actual license suspension, the commissioner may, on the
11 petition of the licensee, stay the execution of all or some part of the
12 suspension on the condition that the licensee pay a monetary penalty
and the further condition that the licensee incur no other cause for
disciplinary action within a period of time specified by the
commissioner.

13 5. As set forth in Factual Findings 12 through 14, Respondent is both a
14 licensed CPA and a licensed broker. His conduct in violation of section 10176, subdivision (a),
15 was an isolated incident. Respondent alleges that it occurred during a time when Respondent's
16 attention was heavily focused on his duties as a CPA during tax preparation season, and while
17 his assistant was out on maternity leave. These factors, while unique, do not excuse
18 Respondent's conduct or relieve him in any way from fully complying with the real estate laws,
19 particularly as they relate to honesty in his licensed dealings. Respondent has testified that he
20 has changed his business practices to ensure that he is now in possession of clients' earnest
21 money checks before he communicates any offers.

22 6. Considering all of the circumstances, the public interest and public
23 welfare will be adequately served by: (1) suspending Respondent's license for ninety (90) days
24 with an actual suspension of thirty (30) days; (2) permitting Respondent to pay a monetary
25 penalty to the department in lieu of an actual license suspension pursuant to section 10175.2;
26 and (3) requiring Respondent to complete an ethics course as approved by the department.

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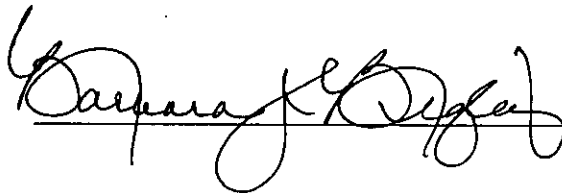
1 b) That no final subsequent determination be made, after hearing or
2 upon stipulation, that cause for disciplinary action occurred within one (1) year from the
3 effective date of this Order. Should such a determination be made, the Commissioner may, in
4 his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed
5 suspension. Should no such determination be made, the stay imposed herein shall become
6 permanent.

7 3. Respondent shall, within six (6) months from the effective date of this
8 Decision, take and pass the Professional Responsibility Examination administered by the
9 Department including the payment of the appropriate examination fee. If Respondent fails to
10 satisfy this condition, the Commissioner may order suspension of Respondent's license until
11 Respondent passes the examination.

12 This Decision shall become effective at 12 o'clock noon on DEC - 6 2011

13 IT IS SO ORDERED 11-14-11

14 BARBARA J. BIGBY
15 Acting Real Estate Commissioner

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AUG 24 2011

DEPARTMENT OF REAL ESTATE
By R. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

MOPINDER SINGH PEGANY,

Respondent.

Case No. H-5432 SAC

OAH No. 2010100414

NOTICE

TO: MOPINDER SINGH PEGANY, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 21, 2011, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 21, 2011, is attached 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 June 16, 2011, 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 June 16, 2011, at the Sacramento

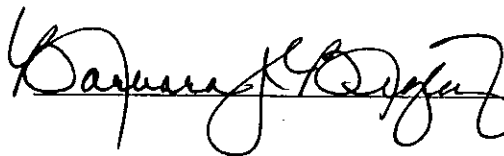
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1 office of the Department of Real Estate unless an extension of the time is granted for good cause
2 shown.

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Sacramento office of the
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 8/23/11

7 BARBARA J. BIGBY
8 Acting Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MOPINDER SINGH PEGANY,

Respondent.

Case No. H-5432 SAC

OAH No. 2010100414

PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on June 16, 2011.

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

Mopinder Singh Pegany (respondent) appeared on his own behalf.

Oral and documentary evidence was received. At the conclusion of the hearing, the parties offered oral closing argument. The record was then closed and the matter was submitted for decision on June 16, 2011.

FACTUAL FINDINGS

1. On December 23, 2004, the department issued a real estate broker license to respondent. Respondent's license will expire on December 22, 2012.
2. Respondent does business as MBM Mortgage & Tax, MGM Real Estate, MTM Realty, and My Tax and Mortgage. Respondent is also a Certified Public Accountant (CPA).
3. On July 21, 2010, complainant made, signed and filed an Accusation against respondent in her official capacity. Complainant alleged that, on March 17, 2009, respondent made a substantial misrepresentation to listing agent Michael Soares of Keller Williams Realty when he submitted a Residential Purchase Agreement for

the real property located at 3407 Bertania Way, Sacramento, California (the property). Specifically, complainant alleged that, as part of the purchase offer, respondent represented that he had an earnest money check for \$5,000 from the prospective buyer in his possession when, in fact, respondent did not have the check in his possession. Escrow was cancelled on April 18, 2009, after the buyer was unable to secure funding to purchase the property. Complainant alleged that respondent's conduct violated Business and Professions Code section 10176, subdivision (a), and that his license was subject to revocation or suspension.¹

4. On August 12, 2010, respondent filed his Notice of Defense. The matter was set for an evidentiary hearing before an Administrative Law Judge of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

Substantial Misrepresentation

5. On March 17, 2009, Zaheer Macy completed a California Residential Purchase Agreement and Joint Escrow Instructions (Agreement) offering to purchase the property from seller Countrywide Home Loans, Inc. (Countrywide) for \$320,000. Mr. Soares was confirmed as the listing agent for the transaction, with respondent/ MTM Realty as selling agent. In pertinent part, the Agreement provided:

INITIAL DEPOSIT: Buyer has given a deposit [earnest money] in the amount of \$5,000 to the agent submitting the offer. . . by personal check. . . which shall be held uncashed until Acceptance then deposited within 3 business days after Acceptance...with Escrow Holder...

6. On March 17, 2009, respondent submitted Mr. Macy's offer to Mr. Soares. Respondent's facsimile cover letter contained the following typed comments:

Please see the attached offer. Can you please confirm receipt of this and POSSIBLY expedite this? Buyers are EAGER to move forward with this offer. Thank you -

Included-
Purchase Agreement
Prequalification Letter
EMO Copy
Proof of Funds

¹ Unless indicated otherwise, all statutory references are to the California Business and Professions Code.

The facsimile cover letter also contained a handwritten notation: "STRONG BUYER -close in 30 days!"

The documents transmitted with this facsimile were Mr. Macy's completed Agreement; a copy of Mr. Macy's \$5,000 check dated March 9, 2009, made payable to "Title" for escrow (i.e., the EMO or earnest money offer copy); a loan prequalification letter from Countrywide; and a "proof of funds" consisting of Mr. Macy's First Federal Bank statement for the period January through February 2009, showing his ending balance of \$54,946.12.

7. On March 21, 2009, Mr. Macy and Countrywide signed a Real Estate Purchase Addendum (Addendum) to their March 20, 2009 Real Estate Purchase Contract. Pursuant to the Addendum, the \$5,000 earnest money deposit was to be delivered to Mr. Soares within 24 hours.

8. Respondent did not expressly inform Mr. Soares or his client Countrywide that he was in actual possession of Mr. Macy's check; however, the language of the Agreement quoted in Finding 5 expressly provides that the buyer had given respondent a \$5,000 deposit in the form of an earnest money check. Respondent's conduct of faxing a copy of Mr. Macy's check to Mr. Soares with his offer substantially misrepresented the true facts by implying that he was in possession of this check.

9. Respondent did not dispute the facts set forth in Findings 5 and 6. At hearing, respondent testified that he did not have Mr. Macy's \$5,000 earnest money check in his possession when he submitted the Agreement to purchase the property to Mr. Soares, or at any other time. Mr. Macy resided in Fayetteville, Arizona. Respondent had a copy of Mr. Macy's check and he sent a copy of this check to Mr. Soares. Over the next several weeks, respondent and his assistants attempted unsuccessfully to obtain the check from Mr. Macy and were told that it had been or would be mailed to them.

10. On April 16, 2009, respondent's administrative assistant Roxy Mustafa sent an email to Mr. Soares's assistant Christy Spindler indicating that "we have been having a hard time collecting the deposit check from the buyer. It was said it had been mailed out a couple of times already to us. . ." Ms. Mustafa further advised that the buyer had not received loan approval and that it would be "best to cancel this transaction due to no loan approval."

11. On April 15, 2009, Mr. Soares filed a complaint with the department at Countrywide's request. Mr. Soares indicated that the transaction for the sale of the property went into escrow on March 23, 2009, but that respondent had failed to place the earnest money funds into escrow, and failed to return the mandatory disclosures required by contract. The sale fell through and Countrywide never realized any money from Mr. Macy through respondent's office.

12. In his communications to the department after the complaint was filed and in his testimony at hearing, respondent provided the following explanation for his conduct.

Respondent rarely worked with out-of-state clients. Respondent believed that Mr. Macy was the only out-of-state buyer with whom he had worked as a broker. His primary means of communicating with Mr. Macy was by telephone and facsimile. At the time, respondent's typical practice was to obtain copies of all prospective buyers' earnest money checks. Once their offers were accepted, respondent would obtain the actual checks and deposit them into escrow. If there was a problem, respondent would go to the prospective buyer and pick up the check. Mr. Macy had faxed respondent a copy of his earnest money check. Because Mr. Macy lived in Arizona, respondent could not easily collect the check. Instead, he and his assistant were informed by Mr. Macy several times that he had mailed the check and that he would fly out and deliver the check. Mr. Macy eventually told respondent that he was not able to obtain a loan approval and the transaction should be cancelled.

Respondent also indicated that: (1) the transaction occurred during tax season, when he was very busy as a CPA and not as focused on his broker transactions; and (2) an assistant on whom he heavily relied in his real estate work was out of the office at the time due to pregnancy complications.

13. Respondent testified that, since this incident, he has changed his business practices. He now requires that all clients provide their earnest money checks to him at the outset of a transaction, before he submits an offer on their behalf.

14. Respondent testified that he has worked as a licensed CPA since 1999 and as a broker since 2004. Other than this isolated incident, respondent has never had complaints filed against him and his licenses have never been disciplined. There was no evidence to contradict respondent's testimony.

Respondent has taken courses in ethics and believes he understands his ethical obligations as a broker; however, he is willing to take such a course if requested by the department. He believes that this was a unique situation due to the out-of-state nature of the prospective buyer and his hectic schedule at the time as described above. Respondent accepts responsibility for his conduct and credibly testified about his changed awareness of his obligations as a broker.

15. Respondent offered a June 8, 2011 letter signed by Mr. Macy which was admitted and considered as permitted by Government Code section 11513, subdivision (d).² Mr. Macy wrote that he had given respondent a copy of his check

² Government Code section 11513, subdivision (d), provides in pertinent part that "hearsay evidence may be used for the purpose of supplementing or explaining

but that, "unfortunately, due to being out of state I never got around to mailing the check." Mr. Macy indicated he intended to deliver the check personally but that he never did so because his loan was denied.

16. At hearing, department counsel agreed that respondent's violation of section 10176, subdivision (a), would be appropriately disciplined by suspension, with a thirty-day actual suspension, an opportunity to buy out the suspension, and completion of an ethics course.

LEGAL CONCLUSIONS

1. In an Accusation seeking to revoke, suspend, or otherwise discipline respondent's professional license, the agency has the burden of proof to establish the allegations in the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App. 3d 853, 856.)

2. Section 10176, subdivision (a), provides that the commissioner may investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and 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."

3. As set forth in the Factual Findings and Legal Conclusions as a whole, complainant met its burden of establishing that respondent made a substantial misrepresentation to Mr. Soares and to Countrywide when he forwarded Mr. Macy's Agreement/offer and a copy of Mr. Macy's \$5,000 earnest money check. The Agreement expressly indicates that respondent had received the initial deposit check from Mr. Macy. This was not true. Respondent in no way indicated to Mr. Soares that all he had in his possession was a copy of Mr. Macy's check. Countrywide relied on respondent's representation when it accepted the offer to purchase the property. Cause, therefore, exists to revoke or suspend respondent's license pursuant to Business and Professions Code section 10176, subdivision (a).

4. Section 10175.2, subdivision (a), provides:

If the Real Estate Commissioner determines that the public interest and public welfare will be adequately served by permitting a real estate licensee to pay a monetary penalty

other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions..."

to the department in lieu of an actual license suspension, the commissioner may, on the petition of the licensee, stay the execution of all or some part of the suspension on the condition that the licensee pay a monetary penalty and the further condition that the licensee incur no other cause for disciplinary action within a period of time specified by the commissioner.

5. As set forth in Factual Findings 12 through 14, respondent is both a licensed CPA and a licensed broker. His conduct in violation of section 10176, subdivision (a), was an isolated incident. It occurred during a time when respondent's attention was heavily focused on his duties as a CPA during tax preparation season, and while his assistant was out on maternity leave. These factors, while unique, do not excuse respondent's conduct or relieve him in any way from fully complying with the real estate laws, particularly as they relate to honesty in his licensed dealings. Respondent has changed his business practices to ensure that he is now in possession of clients' earnest money checks before he communicates any offers.

6. Considering all of the circumstances, the public interest and public welfare will be adequately served by: (1) suspending respondent's license for ninety (90) days with an actual suspension of thirty (30) days; (2) permitting respondent to pay a monetary penalty to the department in lieu of an actual license suspension pursuant to section 10175.2; and (3) requiring respondent to complete an ethics course as approved by the department.

ORDER

All licenses and license rights of respondent Mopinder Singh Pegany are suspended for ninety (90) days from the effective date of this Decision; provided, however, that the suspension shall be stayed upon the following terms and conditions:

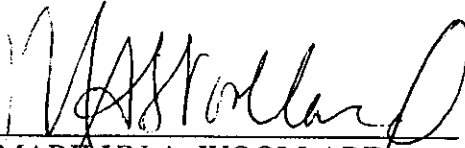
- a. Respondent's license and license rights shall be actually suspended for a period of thirty (30) days. Pursuant to Section 10175.2, respondent may petition the Commissioner to pay a monetary penalty and thereby further stay imposition of the term of the actual suspension.
- b. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
- c. Within ninety (90) days of the effective date of this Decision, respondent shall complete an ethics course and present evidence satisfactory to the Commissioner that he has completed an ethics course.

*Not
Adopted*

d. The Commissioner may vacate and set aside any stay order imposed pursuant to section 10175.2 if a final subsequent determination is made, after hearing or upon stipulation, that cause for disciplinary action occurred during the term of the suspension provided for herein. Should no order vacating the stay be made pursuant to this condition, or condition (c), the stay imposed herein shall become permanent.

Not adopted

DATED: July 21, 2011


MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

1 JOHN W. BARRON, Counsel (SBN 171246)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED

JUL 21 2010

DEPARTMENT OF REAL ESTATE

By H. Mar

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 ***

11 In the Matter of the Accusation of)
12 MOPINDER SINGH PEGANY,)
13 Respondent.)

No. H-5432 SAC

ACCUSATION

14
15 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
16 of the State of California, for cause of Accusation against MOPINDER SINGH PEGANY
17 (hereafter "Respondent"), is informed and allèges as follows:

18 1

19 The Complainant makes this Accusation in her official capacity.

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21 Respondent is presently licensed and/or has license rights under the Real Estate
22 Law, Part of Division 4 of the Business and Professions Code (hereafter "the Code") as a real
23 estate broker dba MGM Mortgage & Tax; MGM Real Estate; MTM Realty; and My Tax and
24 Mortgage.

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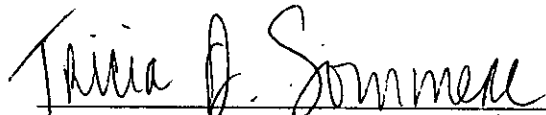
26 On or about March 17, 2009, Respondent submitted a Residential Purchase
27 Agreement to Michael Soares, the listing agent for the real property located at 3407 Bertania

1 Way, Sacramento, California. As a part of that purchase offer, Respondent represented that he
2 had in his possession an earnest money check in the amount of \$5,000 from the prospective
3 buyers of the property. However, Respondent did not have a deposit check from the prospective
4 buyers at the time he submitted the purchase offer. On or about April 18, 2009, the escrow on
5 the property was cancelled due to the buyers being unable to secure funding for the purchase of
6 the property.

7 4

8 The acts and/or omissions of Respondent described in Paragraph 3, above, violate
9 Section 10176(a) of the Code (Grounds for Revocation or Suspension – Making Substantial
10 Misrepresentation).

11 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
12 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
13 action against all licenses and license rights of Respondent under the Code, and for such other
14 and further relief as may be proper under the provisions of law.

15
16 
17 TRICIA D. SOMMERS
18 Deputy Real Estate Commissioner

19 Dated at Sacramento, California,
20 this 19th day of July, 2010.