

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

MAR 30 2011

DEPARTMENT OF REAL ESTATE

By *[Signature]*

In the Matter of the Accusation of)
) NO. H- 5434 SAC
RED OAK REALTY AND LENDING, INC.,)
and KAREN M. SAWTELLE,)
)
Respondent.)
_____)

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on February 17, 2011, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision revokes the real estate licenses of KAREN M. SAWTELLE and RED OAK REALTY AND LENDING, INC on the grounds set forth below.

The right to reinstatement of a revoked real estate license is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondents.

FINDINGS OF FACT

1

On July 14, 2010, TRICIA D. SOMMERS, made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent KAREN M. SAWTELLE, (hereinafter "SAWTELLE") and RED OAK REALTY AND LENDING, INC., ("RED OAK") and Notice of Defense were mailed, by certified mail, to SAWTELLE 's last known mailing address on file with the Department on July 22, 2010.

On February 17, 2011, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent SAWTELLE's default was entered herein.

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At all times mentioned herein, Respondent SAWTELLE has been licensed by the Department under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code") as a real estate broker.

At all times mentioned herein, Respondent RED OAK has been licensed by the Department under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code") as a corporate real estate broker.

On or about February 1, 2008, Respondent SAWTELLE became the designated officer/broker of Respondent RED OAK pursuant to Sections 10159.2 and 10177(h) of the Code. Respondent SAWTELLE was at all times mentioned herein responsible for the supervision of the activities of the officers, agents, real estate licensees and employees of Respondent RED OAK.

Beginning on or about January 26, 2006, and continuing to the present, Respondent RED OAK registered with the Department, the main office address listings of 100 Gold Dredge Drive, Suite A, Oroville, California. However, on or about December 16, 2009, a Department of Real Estate Auditor sent an audit appointment letter to SAWTELLE, at RED OAK's Gold Dredge address and to SAWTELLE's 6635 Upper Palermo Drive, Oroville, California address. On January 5, 2010, the letter sent to the Gold Dredge address was returned by the US Post Office with a label indicating that RED OAK had moved and left no forwarding address. The Upper Palermo Drive letter to SAWTELLE has not been returned; nor has SAWTELLE responded to the Department's letter.

On or about December 22, 2009, the auditor visited the Gold Dredge Drive address and spoke with a Joseph J. who informed the auditor that RED OAK REALTY had moved out of the premises about one year earlier. In addition, the auditor visited the Palermo Drive address and spoke with a Nicolas M. Nicolas M. informed the auditor that SAWTELLE no longer lived on Upper Palermo Drive, but he would see SAWTELLE about once a month when she came to collect the rent. Nicolas M. refused to provide the auditor with SAWTELLE's new address.

On or about September 14, 2005, The California Franchise Tax Board suspended the corporate rights and privileges of Respondent RED OAK. Pursuant to Section 2742 (c), Title 10, California Code of Regulations, ("Commissioner's Regulations") a corporation licensed under Section 10211 of the Code shall not engage in the business of a real estate broker while not in good standing with the California Secretary of State.

The acts and omissions of SAWTELLE constitute violations under Sections 10159.2, 10162 and 10177(h) and Section 10177(d) of the Code of the Code.

The acts and omissions of RED OAK constitute violations under Sections 10162 and 10177(d) of the Code and Section 2742 (c), of the Commissioner's Regulations.

PRIOR DISCIPLINE

As a result of a trust fund shortage discovered in a Department of Real Estate audit, on December 8, 2006, the Department filed an accusation in Department of Real Estate Case Number H-4608 SAC against RED OAK and others. This matter was settled by a Stipulation and Waiver. RED OAK was ordered to repay the missing trust funds and was suspended for sixty (60) days with thirty (30) days stayed for payment of \$3,000.00 and the remaining thirty (30) days stayed for good behavior. Respondent RED OAK was ordered to reimburse the Department of Real Estate for the cost of the audit and was ordered to pay the cost of a further audit.

DETERMINATION OF ISSUES

1

The findings above constitute cause for the suspension or revocation of the licenses and license rights of Respondent SAWTELLE under Sections 10159.2, 10162 and 10177(h) and Section 10177(d) of the Code.

The findings above constitute cause for the suspension or revocation of the licenses and license rights of Respondent RED OAK under Sections 10162, 10211 and 10177(d) of the Code and Section 2742 (c), of the Commissioner's Regulations.

2

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

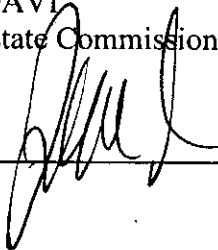
The Department having met its burden of proof it is hereby ordered that all licenses and licensing rights of Respondent KAREN M. SAWTELLE under the provisions of Part 1 of Division 4 of the Business and Professions Code are hereby revoked.

The Department having met its burden of proof it is hereby ordered that all licenses and licensing rights of Respondent RED OAK REALTY AND LENDING, INC., under the provisions of Part 1 of Division 4 of the Business and Professions Code are hereby revoked.

This Decision shall become effective at 12 o'clock noon on APR 19 2011

DATED: 3/15/2011

JEFF DAVIS
Real Estate Commissioner



FILED

JUL 22 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

| | | |
|------------------------------------|---|-------------------|
| In the Matter of the Accusation of |) | No. H- 5434 SAC |
| RED OAK REALTY AND LENDING and, |) | <u>ACCUSATION</u> |
| KAREN M. SAWTELLE, |) | |
| Respondents. |) | |

1

The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against RED OAK REALTY AND LENDING, ("RED OAK REALTY") and KAREN M. SAWTELLE ("SAWTELLE") (hereinafter collectively "Respondents"), is informed and alleges as follows:

2

Respondent RED OAK REALTY is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code") as a real estate corporation.

3

Respondent SAWTELLE is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the

1 Code") as a real estate broker and at all times mentioned herein, for or in expectation of
2 compensation, was performing acts requiring a real estate license.

3 4

4 Whenever reference is made in an allegation in this Accusation to an act or
5 omission of Respondent RED OAK REALTY, such allegation shall be deemed to mean that the
6 officers, directors, employees, agents and real estate licensees employed by or associated with
7 Respondent RED OAK REALTY committed such act or omission while engaged in the
8 furtherance of the business or operations of Respondents RED OAK REALTY and while acting
9 within the course and scope of their corporate authority and employment.

10 5

11 On or about February 1, 2008, Respondent SAWTELLE became the designated
12 officer/broker of Respondent RED OAK REALTY. Pursuant to Sections 10159.2 and 10177(h)
13 of the Code, as the designated officer/broker of Respondent RED OAK REALTY, Respondent
14 SAWTELLE was at all times mentioned herein responsible for the supervision of the activities of
15 the officers, agents, real estate licensees and employees of Respondent RED OAK REALTY.

16 6

17 At all times herein mentioned, Respondent RED OAK REALTY engaged in the
18 business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within
19 the State of California within the meaning of Sections 10131(a) and 10131(b) of the Code
20 including:

21 (a) the operation and conduct of a mortgage loan brokerage business with the
22 public wherein Respondent RED OAK REALTY solicited lenders and borrowers for loans
23 secured directly or collaterally by liens on real property or a business opportunity, and wherein
24 such loans were arranged, negotiated, processed, and consummated by Respondent RED OAK
25 REALTY on behalf of others and wherein promissory notes or interests therein were sold or
26 purchased on behalf of another or others for compensation or in expectation of compensation.

1 (b) the operation and conduct of property management activities wherein
2 Respondents leased or rented and offered to lease or rent, and placed for rent, and solicited
3 listings of places for rent, and solicited for prospective tenants of real property or improvements
4 thereon, and collected rents from real property or improvements thereon; and,

5 (c) the operation and conduct of a residential resale brokerage wherein
6 Respondent RED OAK REALTY bought, sold, or offered to buy or sell, solicited or obtained
7 listings of, and negotiated the purchase, sale or exchange of real property or business
8 opportunities.

9 PRIOR DISCIPLINE

10 7

11 As a result of a trust fund shortage discovered in a Department of Real Estate
12 audit on December 8, 2006, the Department filed Case Number H-4608 SAC which was settled
13 by a Stipulation and Waiver, wherein RED OAK REALTY was ordered to repay the missing
14 trust funds and was suspended for sixty (60) days with 30 days stayed for payment of \$3,000.00
15 and the remaining 30 days stayed for good behavior. Respondent RED OAK REALTY was
16 ordered to reimburse the Department of Real Estate the cost of the audit and was ordered to pay
17 the cost of a further audit.

18 FIRST CAUSE OF ACTION
19 Office Abandonment

20 8

21 Beginning on or about January 26, 2006 and continuing to the present,
22 Respondent RED OAK REALTY registered with the Department, the main office address
23 listings of 100 Gold Dredge Drive, Suite A, Oroville, California. However, on or about
24 December 16, 2009, a Department of Real Estate auditor sent an audit appointment letter to
25 SAWTELLE at RED OAK REALTY's Gold Dredge address and to SAWTELLE's 6635 Upper
26 Palermo Drive, Oroville, California address. On January 5, 2010, the letter sent to the Gold
27 Dredge address was returned by the US Post Office with a label indicating that RED OAK

1 REALTY had moved and left no forwarding address. The Upper Palermo Drive letter to
2 SAWTELLE has not been returned; nor has SAWTELLE responded to the Department's letter.

3 9

4 On or about December 22, 2009 the auditor visited the Gold Dredge Drive address
5 and spoke with a Joseph J. who informed the auditor that RED OAK REALTY had moved out of
6 the premises about one year earlier. In addition, the auditor visited the Palermo Drive address
7 and spoke with a Nicolas M. Nicolas M. informed the auditor that SAWTELLE no longer lived
8 on Upper Palermo Drive, but he would see SAWTELLE about once a month when she came to
9 collect the rent. Nicolas M. refused to provide the auditor with SAWTELLE's new address.

10 10

11 On April 20, 2010, an investigator with the Butte County District Attorney's
12 Office was contacted concerning the whereabouts of SAWTELLE. The DA's Investigator stated
13 that from several sources he has learned that SAWTELLE was living in Mexico and further
14 stated that according to California Department of Motor Vehicle records, SAWTELLE's
15 California Drivers' License had expired and had not been renewed. The DA's investigator was
16 unable to provide a current address for SAWTELLE.

17 11

18 Respondents' failure to have or maintain a definite place of business violates
19 Section 10162 of the Code and therefore constitutes cause for the suspension or revocation of the
20 licenses and license rights of Respondents RED OAK REALTY and SAWTELLE under Section
21 10177(d) of the Code (The commissioner may suspend or revoke the license of a real estate
22 licensee (if the licensee). . . (d) (w)illfully disregarded or violated the Real Estate Law or the
23 rules and regulations of the commissioner.)

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1 SECOND CAUSE OF ACTION
2 Suspended Corporations

3 12

4 Each and every allegation in Paragraphs 1 through 10, inclusive, above, is
5 incorporated by this reference as if fully set forth herein.

6 13

7 On or about September 14, 2005, The California Franchise Tax Board suspended
8 the corporate rights and privileges of Respondent RED OAK REALTY. Pursuant to Section
9 2742 (c), Title 10, California Code of Regulations, (Commissioner's Regulations") a corporation
10 licensed under Section 10211 of the Code shall not engage in the business of a real estate broker
11 while not in good standing with the California Secretary of State. Continued operation of a
12 suspended corporation constitutes cause for suspension or revocation of all licenses and license
13 rights of Respondent RED OAK REALTY under Section 10177(d) of the Code.

14 THIRD CAUSE OF ACTION
15 Failure to Supervise

16 14

17 Each and every allegation in Paragraphs 1 through 13, inclusive, above, is
18 incorporated by this reference as if fully set forth herein.

19 15

20 Respondent SAWTELLE, as the designated officer/broker of Respondent RED
21 OAK REALTY was required to exercise reasonable supervision and control over the activities of
22 Respondent RED OAK REALTY. Respondent SAWTELLE failed to exercise reasonable
23 supervision and control over the activities of Respondent RED OAK REALTY by failing to
24 insure Respondent RED OAK REALTY maintained with the Department, a current main office
25 address and by failing to insure that Respondent RED OAK REALTY's corporate status
26 remained in good standing with the California Secretary of State. SAWTELLE's failures, and
27 each of them, violate Section 10159.2 of the Code (The officer designated by the corporate
broker license. . .shall be responsible for the supervision and control of the activities conducted

1 on behalf of the corporation) and therefore, constitutes cause for suspension or revocation of all
2 licenses and license rights of Respondent SAWTELLE under Section 10177(d) of the Code.

3
4 FOURTH CAUSE OF ACTION
Negligence or Incompetence

5 16

6 Each and every allegation in Paragraphs 1 through 15, inclusive, above, are
7 incorporated by this reference as if fully set forth herein.

8 17

9 The acts and omissions of RED OAK REALTY and/or SAWTELLE as described
10 in paragraphs 1 through 15, above, jointly and severally, constitute negligence or incompetence
11 in performing acts requiring a real estate license, and are cause under Section 10177(g) of the
12 Code for suspension or revocation of all licenses and license rights of RED OAK REALTY
13 and/or SAWTELLE.

14 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
15 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary
16 action against all licenses and license rights of Respondents RED OAK REALTY AND
17 LENDING, and KAREN M. SAWTELLE under the Real Estate Law (Part 1 of Division 4 of the
18 Business and Professions Code) and for such other and further relief as may be proper under
19 other applicable provisions of law.

20 
21 TRICIA D. SOMMERS
22 Deputy Real Estate Commissioner

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