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JAN 30 2013

DEPARTMENT OF REAL ESTATE

By R. Mar

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the First Amended Accusation of)
LEGACY HOME LOANS & REAL ESTATE,)
BRETT JOSEPH TOLIVER, ANGELINA)
MIRELES and JULISSA GARCIA,)
Respondents.)

Case No. H-5456 SAC

OAH No. 2010100416

DECISION

The Proposed Decision dated January 8, 2013, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on
FEB 20 2013.

IT IS SO ORDERED 1/29/13.

REAL ESTATE COMMISSIONER


By AWET P. KIDANE
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

LEGACY HOME LOANS & REAL
ESTATE; BRETT JOSEPH TOLIVER;
ANGELINA MIRELES; AND JULISSA
GARCIA,

Respondents.

Case No. H-5456 SAC

OAH No. 2010100416

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on December 27, 2012, in Sacramento, California.

Annette E. Ferrante, Real Estate Counsel, represented complainant Tricia D. Sommers, a Deputy Real Estate Commissioner of the State of California.

No one appeared for or on behalf of respondents Legacy Home Loans & Real Estate, Brett Joseph Toliver, Angelina Mireles, or Julissa Garcia.

Evidence was received, the record was closed, and the matter was submitted for decision on December 27, 2012.

SUMMARY

Complainant seeks to discipline the real estate broker licenses issued to Legacy Home Loans & Real Estate and Mr. Toliver and the real estate salesperson licenses issued to Ms. Mireles and Ms. Garcia based on each of their violations of the Real Estate Law and regulations adopted pursuant to it. As discussed below, cause exists to discipline each of those licenses. None of the respondents introduced any evidence of its, his, or her fitness for licensure, even with a restricted license, and no such evidence was introduced by anyone else. Furthermore, too little time has elapsed since Ms. Mireles and Ms. Garcia's criminal convictions to consider either of them rehabilitated. Therefore, the real estate broker licenses issued to Legacy Home Loans & Real Estate and Mr. Toliver and the real estate salesperson licenses issued to Ms. Mireles and Ms. Garcia should be revoked outright.

FACTUAL FINDINGS

Procedural Findings

1. On November 21, 2012, complainant filed a First Amended Accusation in her official capacity.
2. Each respondent was served with the First Amended Accusation and First Amended Fourth Continued Notice of Hearing on Accusation pursuant to Government Code section 11505.
3. This matter was called on the date and at the time and location specified in the First Amended Fourth Continued Notice of Hearing on Accusation. No one appeared for or on behalf of any of the respondents, and an evidentiary hearing was conducted as a default proceeding pursuant to Government Code section 11520.
4. Complainant's motion to strike the allegations contained in Subparagraph (e) (page 4, lines 14 through 23) of the First Amended Accusation was granted, without objection.

Factual Findings

5. On February 1, 2007, the Department of Real Estate (Department) issued Corporate Real Estate Broker License No. C/01525441 to Legacy Home Loans & Real Estate (Legacy). The designated officer on the corporate license was Dolores Maria Rossiter-Garcia from the date of issuance through April 6, 2008. From June 2, 2008, through January 31, 2011, the designated officer was Brett Joseph Toliver. The corporate license expired January 31, 2011, and was cancelled June 24, 2011.¹ A Desist and Refrain Order was issued by the Commissioner on August 1, 2011. An Application for Order Directing Payment out of the Real Estate Recovery Account was received by the Department on May 21, 2012.
6. On March 27, 2006, the Department issued Real Estate Salesperson License No. S/01333621 to Mr. Toliver. The Department issued Real Estate Broker License No. B/01333621 to him on January 10, 2006. Mr. Toliver's broker license expires January 29, 2014, unless renewed or revoked. A Desist and Refrain Order was issued on August 1, 2011. An Application for Order Directing Payment Out of the Real Estate Recovery Account was received by the Department on May 1 and 21, 2012.

¹ The revocation, suspension, lapse, cancellation, or voluntary surrender of a real estate license does not deprive the Real Estate Commissioner (Commissioner) of jurisdiction to discipline that license. (Bus. & Prof. Code, § 10103.)

7. On December 19, 2000, the Department issued Real Estate Salesperson License No. S/01291375 to Angelina Mireles. At all times relevant, Ms. Mireles was employed in a licensed capacity by Legacy. Her license expires March 9, 2013, unless renewed or revoked. A Desist and Refrain Order was issued on August 1, 2011.

8. On November 14, 2008, the Department issued Real Estate Salesperson License No. S/01854649 to Julissa Garcia. She was employed in a licensed capacity by Legacy from the date her license was issued until June 15, 2011. Her license expired November 13, 2012, and has not been renewed. A Desist and Refrain Order was issued on August 1, 2011.

9. On May 24, 2000, the Department issued Real Estate Salesperson License No. S/01278971 to Magdalena Salas. Her license was revoked pursuant to a Decision by the Acting Commissioner, effective September 8, 2004. Ms. Salas' Petition for Reinstatement of Real Estate Salesperson License was denied, effective March 8, 2011. A Desist and Refrain Order was issued on August 25, 2010, and the Department received an Application for Order Directing Payment Out of the Real Estate Recovery Account on May 21, 2012.

10. At no time has Vernon Juniel been licensed by the Department in any capacity.

Collection of Advance Fees

11. Legacy claimed, demanded, charged, received, collected, and contracted for the collection of an advance fee for the provision of loan modification services as follows:

a. On February 24, 2009, Ms. Mireles, while performing her duties as a real estate salesperson in the employ of Legacy, demanded, charged, collected, and received an advance fee in the amount of \$2,500 from Ismael Azua and Aracely Membreno when she agreed to provide loan modification services for them.

b. On February 13, 2009, Ms. Mireles, while performing her duties as a real estate salesperson in the employ of Legacy, demanded, charged, collected, and received an advance fee in the amount of \$2,500 from Robert and May Kao Bush when she agreed to provide loan modification services for them.

c. On August 18, 2008, Ms. Mireles, while performing her duties as a real estate salesperson in the employ of Legacy, demanded, charged, collected, and received an advance fee in the amount of \$950 from Iqtadar Ahmed when she agreed to provide loan modification services for him.

d. On April 28, 2009, Ms. Garcia, while performing her duties as a real estate salesperson in the employ of Legacy, demanded, charged, collected, and received an advance fee in the amount of \$2,500 from Ruben Gonzalez when she agreed to provide loan modification services for him.

e. On November 24, 2009, Ms. Garcia, while performing her duties as a real estate salesperson in the employ of Legacy, demanded, charged, collected, and received an advance fee in the amount of \$2,500 from Estrellita Bello when she agreed to provide loan modification services for Ms. Bello.

12. Each of the advance fees discussed in Factual Finding 11 was paid pursuant to a contract that expressly designated the amount paid as being "due in advance." The contract further provided: "Compensation is based on services related to the processing that we perform and provide you in trying to obtain a Loan Modification (sic) in connection to your present mortgage loan on your behalf." And once the advance fee was paid, the homeowner was provided a receipt, which stated, in part: "Fees are earned upon receipt; however, refunds on transactions unable to be modified will be granted."

13. At the time Ms. Mireles collected the advance fee from Mr. Azua and Ms. Membreno, Mr. and Mrs. Bush, and Mr. Ahmed, she told each of them that Legacy had a high success rate with obtaining loan modifications for its clients and it would be no problem modifying their respective loans. She also told each of them to stop making their monthly loan payments and not to contact their lender during the loan modification process. However, neither Ms. Mireles nor anyone else acting on Legacy's behalf was able to obtain a modification of any of the loans. Mr. Azua and Ms. Membreno, Mr. and Mrs. Bush, and Mr. Ahmed each demanded a refund of their advance fee, but none of them was provided one.

14. At the time Ms. Garcia collected the advance fee from Mr. Gonzalez and Ms. Bello, she told each of them that Legacy had a high success rate with obtaining loan modifications for its clients and it would be no problem modifying their respective loans. She also told each of them to stop making their monthly loan payments and not to contact their lender during the loan modification process. However, neither Ms. Garcia nor anyone else acting on Legacy's behalf was able to obtain a loan modification for Mr. Gonzalez or Ms. Bello. Mr. Gonzalez and Ms. Bello each demanded a refund of their advance fee, but neither was provided one.

15. At no time did the Department issue a "no objection" letter authorizing Legacy to advertise, promote, solicit, or negotiate an agreement calling for the payment of an advance fee.

16. At the time each of the advance fees discussed in Factual Finding 11 was collected, Mr. Toliver was the designated officer on Legacy's corporate broker license and therefore personally responsible for all real estate activities conducted on behalf of Legacy.

Compensation of an Unlicensed Person for Performing Licensed Activities

17. In December 2007, on a specific date not established by the evidence, Legacy paid Mr. Juniel \$3,000 for soliciting and referring Arthur Thomas and Dorethy Hicks to Legacy for a home loan to finance their purchase of real property in Oakland, California. And in November 2008, on a specific date not established by the evidence, Legacy paid Mr.

Juniel \$3,000 for soliciting and referring Vera Monferdini to Legacy for a home loan to finance her purchase of real property in Tracy, California.

Failure to File a Corporation Background Statement

18. On September 5, 2006, in connection with Legacy's application for a corporate broker license, Ms. Rossiter-Garcia signed a certification attesting that a Corporation Background Statement was not needed for any officers or persons owning or controlling more than 10 percent of Legacy's shares. The truth of the matter, however, was that a Corporation Background Statement was necessary because Ms. Salas was the chief executive officer and/or president of Legacy at that time and the Department had revoked her real estate salesperson license, effective September 8, 2004.

Evidence that Ms. Salas Engaged in Real Estate Activities Without a License

19. Clear and convincing evidence that Ms. Salas engaged in real estate activities after her salesperson license was revoked was not introduced.²

Failure to Exercise Reasonable Supervision Over Real Estate Activities Performed on Behalf of Legacy

20. As the designated officer on Legacy's corporate broker license from June 2, 2008, through January 31, 2011, Mr. Toliver was required to exercise reasonable supervision over all real estate activities performed on Legacy's behalf during that time. But as discussed in Factual Findings 11 through 15, and 17, he failed to properly supervise such activities. Mr. Toliver was not the designated officer at the time Legacy applied for its broker license, and he is not responsible for its failure to file a background statement information for Ms. Salas.

Criminal Convictions

21. On July 10, 2012, in the Superior Court of the State of California, in and for the County of San Joaquin, Case No. SF119035B, Ms. Mireles pled nolo contendere to, and was convicted of, a misdemeanor violation of Penal Code section 182, subdivision (a)(1), criminal conspiracy. Imposition of sentence was suspended, and respondent was placed on informal probation for three years. She was ordered to enroll in the Community Service Program and complete 240 hours of community service. She was also ordered to pay fines,

² On July 10, 2012, in the Superior Court of the State of California, in and for the County of San Joaquin, Case No. SF119035A, Ms. Salas was convicted of a misdemeanor violation of criminal conspiracy for conspiring to collect illegal advance fees for providing loan modification services to several clients. However, complainant did not allege Ms. Salas' criminal conduct as the basis for seeking discipline for engaging in unlicensed activities. (See, *Wheeler v. State Board of Forestry* (1983) 144 Cal.App.3d 522, 527 [an order of discipline must be based on the factual and legal allegations in the accusation].)

fees, and assessments in the total sum of \$280, \$100 of which was suspended unless probation was revoked, as well as restitution in the amount of \$44,598.

22. On July 10, 2012, in the Superior Court of the State of California, in and for the County of San Joaquin, Case No. SF119035C, Ms. Garcia pled nolo contendere to, and was convicted of, a misdemeanor violation of Penal Code section 182, subdivision (a)(1), criminal conspiracy. Imposition of sentence was suspended, and respondent was placed on informal probation for three years. She was ordered to enroll in the Community Service Program and complete 240 hours of community service. She was also ordered to pay fines, fees, and assessments in the total sum of \$280, \$100 of which was suspended unless probation was revoked, as well as restitution in the amount of \$44,598.

23. The factual basis for both convictions was that between November 10, 2009, and January 4, 2011, Ms. Mireles, Garcia, and Salas conspired with one another to demand and collect an advance fee for providing loan modification services to Lydia and Richard Selfa, Jeffrey and Charlotte Elder, Jose Marban Giles and Ana Marban, Jose and Veronica Aguas, Blanca and Reynoldo Estrada, and Jamie and Carmen Quinonez.

Factors in Aggravation, Mitigation, and Rehabilitation

24. None of the respondents introduced any evidence, and no one introduced any evidence on behalf of any of the respondents.

25. The Department has adopted criteria for consideration when evaluating a licensee's rehabilitation since engaging in criminal conduct. (Bus. & Prof. Code, § 482, subd. (b).) One such criterion that is relevant here is the passage of at least two years since the most recent criminal conviction. (Cal. Code of Regs., tit. 10, § 2912, subd. (a); see, *In re Andreani* (1939) 14 Cal.2d 736, 749 [existence of rehabilitation is difficult to establish affirmatively, "but its nonexistence may be 'proved' by a single act."])

It has been less than seven months since Ms. Mireles and Ms. Garcia were convicted of their crimes. They both have more than two years remaining on criminal probation. Therefore, not enough time has elapsed since Ms. Mireles' and Ms. Garcia's convictions to accurately assess either of their rehabilitation. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [a full and accurate assessment of one's rehabilitation requires a period of assessment after she has completed criminal probation].)

26. As discussed below, cause exists to discipline the real estate licenses issued to Legacy, Mr. Toliver, Ms. Mireles, and Ms. Garcia. The clear and convincing evidence established that each of them engaged in a pattern of dishonest conduct while performing real estate activities and demonstrates that each is unfit to continue performing real estate activities, even with a restricted license. (See, *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402 ["Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee."]) Furthermore, Ms. Mireles and Ms. Garcia were convicted of crimes related to some of their

real estate activities less than seven months ago. Therefore, the real estate licenses issued to Legacy, Mr. Toliver, Ms. Mireles, and Ms. Garcia should each be revoked outright.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant has the burden of proving each of the grounds for discipline alleged in the First Amended Accusation. (See, e.g., *Small v. Smith* (1971) 16 Cal.App.3d 450, 457[.] And she must do so by producing clear and convincing evidence to a reasonable certainty in support of those allegations. (See, e.g., *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.)

Applicable Law

2. It is illegal for a person to engage in real estate activities without the appropriate real estate license. (Bus. & Prof. Code, § 10130.)

3. A real estate broker license is required for anyone who “solicits borrowers ... for ... loans ... or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.” (Bus. & Prof. Code, § 10131, subd. (d).) A broker license is also required for anyone who claims, demands, charges, receives, collects, or contracts “[f]or the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.” (Bus. & Prof. Code, § 10131.2.)

4. An “advance fee” is any fee “[t]hat is claimed, demanded, charged, received, or collected by a licensee for services requiring a license ... before fully completing the service the licensee contracted to perform or represented would be performed....” (Bus. & Prof. Code, § 10026, subd. (a).)

5. Prior to soliciting or collecting an advance fee, a licensee is required to obtain the Department’s approval of any materials that will be used in advertising, promoting, soliciting, and negotiating the advance fee agreement. (Bus. & Prof. Code, § 10085; Cal. Code of Regs., tit. 10, § 2970, subd. (a).) The Department’s approval comes in the form of a “no objection” letter.

6. As of October 11, 2009, no advance fee may be claimed, demanded, charged, received, or collected in connection with loan modification services. (Bus. & Prof. Code, § 10085.5; Civ. Code, § 2944.7.)

7. It is unlawful for a real estate broker to employ or compensate a person for performing real estate activities who is not also a licensed broker or a salesperson licensed under the broker employing or compensating him or her. (Bus. & Prof. Code, § 10137.)

8. A real estate broker is required by law to “exercise reasonable supervision over the activities of his or her salespersons...” (Cal. Code Regs., tit. 10, § 2725.) With regard to corporate brokers, Business and Professions Code section 10159.2, subdivision (a), states:

The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

9. Under certain circumstances, the designated officer on a corporate broker license is required to file a background statement of information when applying for an original broker license. California Code of Regulations, title 10, section 2746, subdivision (a), provides, in pertinent part:

At the time of application for, or in the reinstatement of, an original real estate broker license, the designated officer shall file a background statement of information for each director, the chief executive officer, the president, first level vice presidents, secretary, chief financial officer, subordinate officers with responsibility for forming policy of the corporation and all natural persons owning or controlling more than ten percent of its shares, if such person has been the subject of any of the following:

[¶]...[¶]

(2) Has had a license to engage in or practice real estate or other regulated profession, occupation or vocation denied, suspended or revoked during the preceding 10 years;...

Cause for Discipline

Legacy Home Loans & Real Estate

10. A real estate license may be disciplined when the licensee has made a false promise of a character likely to influence, persuade, or induce. (Bus. & Prof. Code, §10176, subd. (b).) Ms. Mireles made such a promise, on behalf of Legacy, when she failed to obtain

a loan modification for Mr. Azua and Ms. Membreno, Mr. and Mrs. Bush, and Mr. Ahmed and again when she refused their subsequent request for a refund of the advance fee paid. (Factual Findings 11a-11c, 12, and 13.) And Ms. Garcia made such a promise, on behalf of Legacy, when she failed to obtain a loan modification for Mr. Gonzalez and Ms. Bello and again when she refused their subsequent request for a refund of the advance fee paid. (Factual Findings 11d-11e, 12, and 14.) Therefore, cause exists to discipline Legacy's real estate broker license pursuant to Business and Professions Code section 10176, subdivision (b), based on each of the promises made by Ms. Mireles and Ms. Garcia.

11. A real estate license may be disciplined if the licensee has engaged in "a continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons." (Bus. & Prof. Code, § 10176, subd. (c).) For the reasons discussed in Legal Conclusion 10, cause exists to discipline Legacy's real estate broker license pursuant to Business and Professions Code section 10176, subdivision (c).

12. A real estate license may be disciplined if the licensee has committed fraud or dishonest dealing. (Bus. & Prof. Code, § 10176, subd. (i).) For the reasons discussed in Legal Conclusion 10, cause exists to discipline Legacy's real estate broker license pursuant to Business and Professions Code section 10176, subdivision (i).

13. A real estate license may be disciplined if the licensee has willfully disregarded or violated the Real Estate Law or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 10177, subd. (d).) As discussed in Legal Conclusion 5, the Department must issue a "no objection" letter before a licensee is allowed to solicit or collect an advance fee. (Bus. & Prof. Code, § 10085; Cal. Code of Regs., tit. 10, § 2970, subd. (a).) The Department never issued Legacy a no objection letter. (Factual Finding 15.) Nonetheless, Ms. Mireles solicited and collected advance fees on behalf of Legacy from Mr. Azua and Ms. Membreno, Mr. and Mrs. Bush, and Mr. Ahmed; and Ms. Garcia did the same with regard to Mr. Gonzalez and Ms. Bello. (Factual Findings 11a-11e.) Therefore, cause exists to discipline Legacy's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code section 10085 and California Code of Regulations, title 10, section 2970.

14. As discussed in Legal Conclusion 6, no licensee was allowed to claim, demand, charge, receive, or collect an advance fee for providing loan modification services after October 10, 2009. (Bus. & Prof. Code, § 10085.5; Civ. Code, § 2944.7.) On November 24, 2009, Ms. Garcia, acting on behalf of Legacy, claimed, demanded, charged, received, and collected an advance fee for providing loan modification services to Ms. Bello. (Factual Finding 11e.) Therefore, cause exists to discipline Legacy's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code section 10085.5 and Civil Code section 2944.7, individually and collectively.

15. A real estate license may be disciplined if the licensee has demonstrated negligence or incompetence in performing a real estate activity. (Bus. & Prof. Code, §

10177, subd. (g).) For the reasons discussed in Legal Conclusion 10, cause exists to discipline Legacy's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (g).

16. As discussed in Legal Conclusion 7, it is unlawful for a real estate broker to employ or compensate a person for performing real estate activities who is not also a licensed broker or a salesperson licensed under the broker employing or compensating him. (Bus. & Prof. Code, § 10137.) As discussed in Factual Finding 17, Legacy paid Mr. Juniel \$3,000 for soliciting and referring Arthur Thomas and Dorethy Hicks to Legacy for a home loan to finance their purchase of real property in Oakland, California. Legacy also paid Mr. Juniel \$3,000 for soliciting and referring Ms. Monferdini to Legacy for a home loan to finance her purchase of real property in Tracy, California. As explained in Legal Conclusion 3, a real estate broker license is required in order for a person to solicit others for home loans. (Bus. & Prof. Code, § 10131, subd. (d).) But Mr. Juniel has never held a real estate license issued by the Department. (Factual Finding 10.) Therefore, cause exists to discipline Legacy's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code section 10137.

17. For the reasons discussed in Factual Finding 19, no cause exists to discipline Legacy's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code section 10137, based on Ms. Salas' alleged performance of real estate activities after her salesperson license was revoked.

18. As discussed in Legal Conclusion 9, the designated officer for a corporate broker is required to file a background statement of information for any corporate officer whose real estate license has been disciplined within the previous 10 years when filing an application for licensure or seeking reinstatement. (Cal. Code of Regs., tit. 10, § 2746, subd. (a).) Ms. Rossiter-Garcia, the designated officer at the time Legacy applied for its broker license, was required to file a background statement of information for Ms. Salas, Legacy's chief executive officer and/or president, with Legacy's application for licensure because Ms. Salas' real estate salesperson license had been revoked less than two years prior. (Factual Finding 18.) But Ms. Rossiter-Garcia did not. Therefore, cause exists to discipline Legacy's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to California Code of Regulations, title 10, section 2746, subdivision (a).

Brett Joseph Toliver

19. A real estate license may be disciplined if the licensee is the designated officer on a corporate license and fails to exercise reasonable supervision and control over the real estate activities conducted on behalf of the corporation. (Bus. & Prof. Code, § 10177, subd. (h).) As the designated officer on Legacy's corporate broker license from June 2, 2008, through January 31, 2011, Mr. Toliver was required to exercise reasonable supervision over all real estate activities performed on Legacy's behalf during that time. (Factual Finding 20.)

But as discussed in Factual Findings 11 through 15, and 17, he failed to properly supervise such activities. Therefore, cause exists to discipline Mr. Toliver's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (h). And his conduct also constitutes cause to discipline his license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code section 10159.2 and California Code of Regulations, title 10, section 2725, as well as Business and Professions Code section 10177, subdivision (g).

Angelina Mireles

20. A real estate license may be disciplined if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) Ms. Mireles was convicted of criminal conspiracy for conspiring to demand and collect an advance fee for providing loan modification services to Mr. and Mrs. Selfa, Mr. and Mrs. Elder, Mr. Giles and Ms. Marban, Mr. and Mrs. Aguas, Mr. and Mrs. Estrada, and Mr. and Mrs. Quinonez after October 10, 2009. (Factual Findings 21 and 23.) Such crime is substantially related to the qualifications, functions, or duties of a real estate licensee. (Cal. Code of Regs., tit. 10, § 2910, subds. (a)(6) [willful failure to comply with a provision of Division 4 of the Business and Professions Code], (7) [willful failure to comply with a statutory requirement that an entitlement be obtained from a public authority before engaging in a course of conduct], (8) [doing an unlawful act with the intent of conferring a financial benefit on oneself], and (10) [engaging in a demonstrated pattern of repeated and willful disregard of law]; (b) [a conviction for conspiracy to commit a crime specified in subdivision (a) is substantially related].) Therefore, cause exists to discipline Ms. Mireles' real estate salesperson license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), individually and collectively.

Julissa Garcia

21. For the reasons discussed in Legal Conclusion 20, cause exists to discipline Ms. Garcia's real estate salesperson license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), individually and collectively, based on her conviction for conspiring to demand and collect an advance fee for providing loan modification services to Mr. and Mrs. Selfa, Mr. and Mrs. Elder, Mr. Giles and Ms. Marban, Mr. and Mrs. Aguas, Mr. and Mrs. Estrada, and Mr. and Mrs. Quinonez after October 10, 2009. (Factual Findings 22 and 23.)

Conclusion

22. Cause exists to discipline the real estate broker license issued to Legacy Home Loans & Real Estate for the reasons discussed in Legal Conclusions 10 through 16 and 18, individually and collectively. Cause also exists to discipline the real estate broker license issued to Brett Joseph Toliver for the reasons discussed in Legal Conclusion 19. And cause exists to discipline the real estate salesperson licenses issued to Angelina Mireles and Julissa

Garcia for the reasons discussed in Legal Conclusions 20 and 21, respectively. As discussed in Factual Findings 24 through 26, none of the respondents introduced any evidence demonstrating its, his, or her fitness to continue engaging in the duties of a real estate licensee, even with a restricted license. And too little time has elapsed since Ms. Mireles' and Ms. Garcia's convictions to consider either of them rehabilitated. Therefore, respondents' respective real estate licenses should be revoked outright.

ORDER

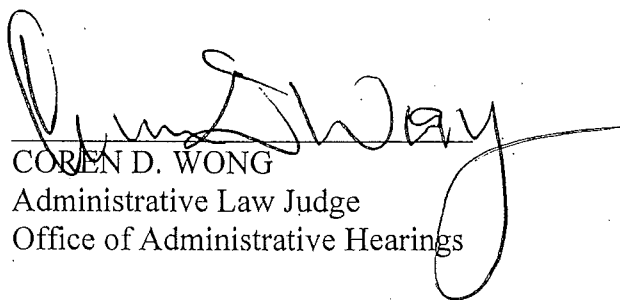
1. All licenses and licensing rights of respondent Legacy Home Loans & Real Estate under the Real Estate Law are REVOKED.

2. All licenses and licensing rights of respondent Brett Joseph Toliver under the Real Estate Law are REVOKED.

3. All licenses and licensing rights of respondent Angelina Mireles under the Real Estate Law are REVOKED.

4. All licenses and licensing rights of respondent Julissa Garcia under the Real Estate Law are REVOKED.

DATED: January 8, 2013


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings