

FILED

JAN 10 2012

DEPARTMENT OF REAL ESTATE

By P. Jones

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of

GREGORY MARTIN ANDERSON,

Respondent.

)  
) NO. H-5532 SAC

)  
) OAH NO. 2011030697

DECISION

The Proposed Decision dated December 5, 2011, 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 JAN 30 2012.

IT IS SO ORDERED 1/9/12.

BARBARA J. BIGBY  
Acting Real Estate Commissioner

Barbara J. Bigby

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GREGORY MARTIN ANDERSON,

Respondent.

Case No. H-5532 SAC

OAH No. 2011030697

**PROPOSED DECISION**

Administrative Law Judge Karen E. Reichmann, State of California, Office of Administrative Hearings, heard this matter on November 1, 2011, in Oakland, California.

Truly Sughrue, Real Estate Counsel, represented complainant.

William R. Bragg, Attorney at Law, represented respondent Gregory Martin Anderson, who was present at the hearing.

Submission of this matter was deferred for briefing. Respondent's trial brief was received on November 4, 2010 and has been marked as Exhibit I. Complainant's rebuttal brief was received on November 8, 2011 and has been marked as Exhibit 9.

This matter was submitted for decision on November 8, 2011.

**FACTUAL FINDINGS**

1. Tricia Sommers made the accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.
2. Respondent Gregory Martin Anderson is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate broker. Respondent has been licensed since 1974.
3. Respondent is a partner in Coldwell Banker Sellers Realty in Eureka.
4. On June 10, 2008, Richard and Marcia Carlson entered into a listing agreement with Coldwell Banker Sellers Realty to sell their home in McKinleyville. The Carlsons were selling the property because they were in the midst of a highly contentious divorce and agreed that respondent would be the broker for the listing. Their decision to sell the property through respondent was approved by the court presiding over the divorce action.

Both of the Carlsons are real estate licensees. Marcia Carlson was a real estate salesperson working as an independent contractor at Coldwell Banker Sellers Realty, with respondent as her supervising broker, from August 2006 through February 2010.

5. During the course of her work at the Coldwell Banker agency, Marcia Carlson was asked to show properties to a prospective buyer, Brian Stancliff. Stancliff developed an interest in the Carlsons' home. Another licensee at Coldwell Banker, Jack Limmer, prepared an offer on the home on behalf of Stancliff.

6. In July 2008, Stancliff and the Carlsons entered into a sales agreement for an amount less than what the Carlsons owed on their mortgage, making the transaction a short sale. Respondent negotiated terms of the short sale with the Carlsons' lender, Wells Fargo Bank.

7. During the short sale negotiations, respondent asked the Carlsons to sign an authorization form permitting respondent to receive and convey information to Wells Fargo. When Richard Carlson received this form, he noticed that the form listed "Marcia Carlson" as the listing agent in a box at the bottom of the form. He contacted respondent, and told him that he would only authorize respondent to work on the short sale negotiations and that only respondent could have access to his personal financial information. Respondent reassured Richard Carlson that respondent was the only agent working on the listing.

8. In an e-mail dated July 29, 2008, Richard Carlson wrote to respondent regarding the authorization form that he "noticed that Marcia is listed as the agent on this form. This must be changed. Was she shown as the agent for the counter offer? If so, that needs to be changed as well." Respondent responded by e-mail on July 30, 2008, "Thanks for catching that. I just told Marcia to do it without thinking about the imprint. The counter offers and the attached were done through my account and, hence, have my information."

9. Escrow on the sale of the Carlsons' home closed in October 2008. Wells Fargo agreed to pay a five percent commission on the transaction, which was \$15,995. After various deductions were made, Coldwell Banker Sellers Realty paid respondent \$9,480.69 of the commission. A couple of days after receiving this payment, respondent paid Marcia Carlson \$5,000 and Jack Limmer \$1,000 for their assistance in the sale of the Carlson property. The closing statement for the sale of the home did not list Marcia Carlson or Jack Limmer as recipients of any portion of the commission.

10. At the time that respondent paid Marcia Carlson \$5000 from the commission received on the sale of the Carlson property, respondent did not notify Richard Carlson that Marcia Carlson was receiving this payment. Richard Carlson became aware of the payment on August 31, 2009, when respondent testified at one of many hearings held in the Carlson divorce matter. Richard Carlson was upset by this revelation, and felt that respondent had gone behind his back. Richard Carlson sent a complaint to the Department. In his complaint, he accused respondent of fraud and breach of his fiduciary duties.

11. While acting as the listing broker for the Carlson home, respondent never discussed with Richard Carlson the fact that he intended to compensate Marcia Carlson for any assistance she provided in the sale of the home. Richard Carlson was not aware that Marcia Carlson was involved in finding the buyer for the transaction or that she was performing work on the sale for which she would be compensated.

12. Respondent was initially surprised when he was asked by the Carlsons to sell their home because of his professional relationship with Marcia Carlson. Two offers on the home were received in July 2008. The first agent to have contact with the ultimate buyer of the home was Marcia Carlson. Respondent was never told that Marcia Carlson could not be involved in marketing the home. Respondent would not have taken the listing had he been told that Marcia Carlson was not permitted to work on the sale. In addition to bringing the buyer to the property, Marcia Carlson performed work on the sale, such as installing the flyer box, generating fliers, entering the listing into the Multiple Listing Service, and amassing information to send to Wells Fargo during short sale negotiations.

13. Respondent testified that Richard Carlson expressed concern to him about maintaining the confidentiality of his personal information, but never directed him that Marcia Carlson could not work on the sale or be paid for her work. In order to honor Richard Carlson's request for confidentiality, respondent personally picked up Richard Carlson's documents, scanned them, and sent them to the bank, and returned them, making sure that no copies would be maintained in the Coldwell Banker files. Respondent did not make Richard Carlson's personal financial information available to Marcia Carlson. Respondent stated that the authorization form inadvertently featured Marcia Carlson's name on it because she generated the form and the computer program automatically puts the name of the agent generating the form on the bottom of the form. When Richard Carlson notified respondent that Marcia Carlson's name was on the form, he corrected it.

14. Respondent testified that he decided when he received the listing for the Carlsons' home that he would compensate Marcia Carlson, depending on how much work she performed on the sale. He stated that it is the normal practice in his office to share commissions with other agents who have provided assistance, on a case-by-case basis. After the Carlson sale was completed, respondent decided on the amounts that he deemed appropriate to compensate the two individuals who helped with the sale, Jack Limmer and Marcia Carlson.

15. Respondent was acquainted with the Carlsons for two years prior to the receiving the listing. Respondent stated that Richard Carlson was aware that the Coldwell Banker office was a collaborative work environment and that everyone there worked together.

16. There have been no other disciplinary proceedings against respondent.

#### LEGAL CONCLUSIONS

1. Business and Professions Code section 10176, subdivision (a), authorizes the Real Estate Commissioner to discipline a licensee who, in the course of performing his duties, makes a substantial misrepresentation. A licensee is required to disclose material information to the principals as part of his fiduciary duties. (*Field v. Century 21 Klowden-Forness Realty* (1998) 63 Cal.App.4th 187) Here, respondent was aware that the two sellers of the Carlson home were adversaries in a highly contested divorce proceeding. Respondent misrepresented to one of the sellers, Richard Carlson, that the other seller, Marcia Carlson, would not be working on the transaction and did not inform him that she would receive a portion of the commission from the sale. Although there is normally no requirement that a seller be notified when a listing agent shares his compensation with an agent who provided assistance in the transaction, under the unique circumstances of this case, respondent's assurance to Richard Carlson that Marcia Carlson would not be working on the transaction constitutes a substantial misrepresentation. Richard Carlson had expressed to respondent concerns about the role that Marcia Carlson would play in the transaction. Respondent decided upon receiving the listing that he would compensate Marcia Carlson, but he did not reveal this decision to Richard Carlson. Richard Carlson was entitled to be informed that Marcia Carlson would be involved in a professional capacity in the sale of their jointly-owned property and would receive a portion of the proceeds of the sale. Therefore, cause exists to suspend or revoke respondent's real estate broker license by reason of the matters set forth in Findings 8, 9, 11 and 13.

2. Business and Professions Code section 10176, subdivision (i), authorizes the Real Estate Commissioner to discipline a licensee who, in the course of performing his duties, engages in conduct which constitutes fraud or dishonest dealing. Respondent's conduct of not disclosing the role of Marcia Carlson in the sale of the house to his client Richard Carlson constitutes dishonest dealing. Therefore, cause exists to discipline respondent's real estate broker license under Business and Professions Code section 10176, subdivision (i).

3. Business and Professions Code section 10177, subdivision (g), authorizes the Real Estate Commissioner to discipline a licensee who demonstrates negligence or incompetence in performing an act for which a real estate license is required. The evidence does not support a conclusion that respondent demonstrated negligence or incompetence in performing his duties as the listing agent for the Carlsons' home.

4. Respondent made a substantial misrepresentation to his client Richard Carlson by assuring him that that Marcia Carlson would not be participating in the sale of their home and not notifying him that she would be compensated for her efforts. It appears that respondent was influenced by his relationship with Marcia Carlson to assure that she partook in a portion of the commissions from the sale of the Carlson home. Respondent's misrepresentation and dishonest dealings in the course of his work on the sale of the Carlson home raise concerns about his fitness to execute the duties of a real estate broker with honesty and integrity. It is noted that respondent has been licensed since 1974 with no other disciplinary proceedings against his license. At the hearing, complainant stated that a 60-90 day suspension would be the appropriate discipline in this case and did not recommend

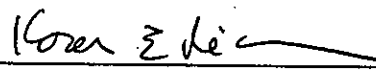
revocation of respondent's license. Given that the facts and circumstances of this case are unusual and unlikely to recur, revocation is not necessary to protect the public interest. The appropriate discipline in this matter is a 60-day suspension. All but 10 days of the suspension will be ordered stayed.

#### ORDER

All licenses and licensing rights of respondents Gregory Martin Anderson under the Real Estate Law are suspended for a period of 60 days from the effective date of this Decision; provided, however, that 50 days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

DATED: 12-5-2011

  
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KAREN E. REICHMANN  
Administrative Law Judge  
Office of Administrative Hearings

FILED

JAN 14 2011

DEPARTMENT OF REAL ESTATE

By 

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8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of  
12 GREGORY MARTIN ANDERSON,  
13 Respondent.

No. H- 5532 SAC  
ACCUSATION

14  
15 The Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the  
16 State of California, for cause of Accusation against GREGORY MARTIN ANDERSON  
17 (hereinafter "Respondent"), is informed and alleges as follows:

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19 The Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the  
20 State of California, makes this Accusation in her official capacity.

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22 At all times mentioned, Respondent was and now is licensed and/or has license  
23 rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code)  
24 (hereinafter "the Code").

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At all times mentioned, Respondent was and is licensed by the Department of Real Estate (hereinafter "the Department") as a real estate broker. At all times mentioned, Respondent was a partner and/or broker associate with Coldwell Banker Sellers Realty.

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At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate licensee in the State of California within the meaning of Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property.

5

On or about June 10, 2008, in the course of the activities described in Paragraph 4, Respondent, on behalf of Coldwell Banker Sellers Realty, entered into a Residential Listing Agreement with Richard Russell C. (hereinafter "Richard") and Marcia Ann C. (hereinafter "Marcia") to sell the real property located at 1975 Juniper Street, California (hereinafter "subject property"). The sale of the subject property was due to the dissolution of the marriage of Richard and Marcia.

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On or about October 1, 2008, escrow closed on the sale of the subject property. Upon the close of escrow, Coldwell Banker Sellers Realty was paid \$15,995 in commission.

7

On or about October 2, 2008, Anderson received a commission check from Coldwell Banker Sellers Realty in the amount of \$9,840.69 for the sale of the subject property.

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On or about October 3, 2008, Anderson without the knowledge or consent of Richard paid a rebate in the amount of \$5,000 to Marcia.

Respondent's conduct described above constitutes the making of substantial misrepresentations, and fraud or dishonest dealing, and is cause under Sections 10176(a) and 10176(i) of the Code for suspension or revocation of all licenses and license rights of Respondent. In the alternative, Respondent's conduct described above constitutes the making of substantial misrepresentations, and negligence or incompetence in performing acts requiring a real estate license, and is cause under Sections 10176(a) and 10177(g) of the Code for suspension or revocation of all licenses and license rights of Respondent.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.

  
TRICIA SOMMERS  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 14th day of January, 2011.