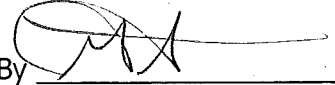


FILED

May 3, 2012

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Accusation of)
)
UNITED COMMONWEALTH MORTGAGE,)
INC. and GEORGE C. DEANE)
)
Respondent.)
_____)

CASE NO. H-5631 SAC

OAH NO. 2011090449

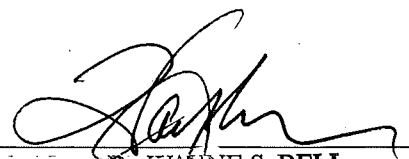
DECISION

The Proposed Decision dated March 19, 2012, 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 MAY 24 2012.

IT IS SO ORDERED 4/24/2012.

REAL ESTATE COMMISSIONER

By: 
By **WAYNE S. BELL**
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

UNITED COMMONWEALTH
MORTGAGE, INC. and GEORGE C.
DEANE,

Respondents.

Case No. H-5631-SAC

OAH No. 2011090449

PROPOSED DECISION

On January 17, 2012, in Sacramento, California, Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Richard K. Uno, Counsel, represented the complainant.

Respondent, United Commonwealth Mortgage Inc., was represented by its owner and president Kristie Rosetti aka Kristin A. Rosetti.

Respondent George C. Deane represented himself, with the assistance of Kristie Rosetti.

Evidence was received. The record remained open to allow the parties to file briefs on the issue of collateral estoppel. Complainant's post-hearing brief was received on January 31, 2012, and was marked for identification as Exhibit 15. Respondents' joint closing brief was received on February 15, 2012, and was marked for identification as Exhibit B. The matter was submitted and the record was closed on February 16, 2012.

FACTUAL FINDINGS

1. On April 15, 2011, Tricia D. Sommers, Deputy Real Estate Commissioner of the State of California, made the Accusation in her official capacity and filed it on June 29, 2011.

2. Respondents timely filed a Request for Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

3. Dino Robert Rosetti (Rosetti) was licensed as a real estate broker until August 10, 2007, when the Department revoked his real estate broker license for numerous violations of the Business and Professions Code, including fraud, dishonest dealings, employing an unlicensed person to perform activities for which a license was required, making false representations, negligence and incompetence.

4. Rosetti's wife, Kristie Rosetti, has not been licensed by the Department in any capacity. On August 17, 2007, seven days after her husband's license was revoked, Kristie Rosetti incorporated United Commonwealth Mortgage Inc. (UCM), as a mortgage brokerage. The California Secretary of State's records show that Kristin A. Rosetti is the Chief Executive Officer, Secretary and Chief Financial Officer of UCM.

5. The Department licensed UCM as a corporate real estate broker on October 15, 2007.

6. The Department issued George C. Deane (Deane) a salesperson license in September 1988. He worked for various brokers and effective May 18, 2008, he listed his employing broker as UCM. In 2008, Deane was also listed with the Secretary of State as a Director of UCM. The Department issued Deane a broker license on October 28, 2009. Deane was added to the UCM license as its Designated Officer on September 9, 2010.

7. On June 29, 2011, the Department issued an Order to Desist and Refrain¹ against Rosetti, alleging that he was engaging in real estate activity without a license and demanding that he cease all activities which required Department licensure. Rosetti was duly served with the Order to Desist and Refrain. On July 1, 2011, the Department issued a Preliminary Bar Order and Notice of Intention to Issue a Final Bar Order,² against Rosetti. Rosetti was duly served with this Order, but did not file a request for hearing. The Department issued a Final Bar Order on August 11, 2011, pursuant to the authority granted to the Department by Business and Professions Code section 10087.

8. The Final Bar Order contained Findings of Fact regarding Rosetti's unlicensed real estate activity. The pertinent Findings of Fact are summarized below.

¹ Department case number H-5632 SAC.

² Department case number H-5640 SAC.

Although Rosetti's real estate broker's license had been revoked and he was not licensed by the Department in any other capacity, UCM employed him in 2009 and 2010 to negotiate loans. Acting on behalf of UCM, Rosetti engaged in the following unlicensed activity:

(1) In December 2009, Rosetti, agreed to negotiate a loan for a buyer, Tammy H., for real property at 70 Cedro Circle, Sacramento, California. On or about December 3, 2009, Tammy H. entered into a contract for the purchase of the Cedro Circle property.

(2) In June 2010, Rosetti agreed to negotiate a loan for buyers Christine P. and Paul C. for real property at 253 AltaVista, Roseville, California. On or about June 4, 2010, Christine P. and Paul C. entered into a contract for the purchase of the Alta Vista property.

(3) In August 2010, Rosetti agreed to negotiate a loan for buyers Erin L. and Chad L. for real property at 4159 Pylos Way, Rancho Cordova, California. On or about August 28, 2010, Erin L. and Chad L. entered into a contract for the purchase of the Pylos Way property.

9. The instant Accusation against UCM and Deane alleges that UCM employed and compensated Rosetti, an unlicensed individual, to perform activities which require a real estate license, including soliciting lenders and borrowers for loans secured directly or collaterally by liens on real property and arranging, negotiating, processing and consuming such loans. The Accusation specifically alleges that Rosetti engaged in the operation and conduct of a loan brokerage business in respect to the 70 Cedro Circle, the 253 AltaVista Avenue and the 415 Pylos Way properties (the three properties).

10. Complainant introduced into evidence the Final Bar Order against Rosetti and maintained that the Findings of Fact contained therein were binding upon UCM and Deane. The issue of collateral estoppel was briefed by the parties. Complainant's argument was persuasive and the Findings of Fact contained within the Final Bar Order (as set forth herein in Factual Finding 8) are deemed established within this preceding.

11. Complainant supplemented the Findings of Fact contained within the Final Bar Order with the evidence it had gathered to support these findings. Kyle Jones and Heather Nishimura, Special Investigators with the Department, testified that they had received information that Rosetti might be involved in unlicensed activity at UCM. On September 9, 2010, they made an unannounced visit to the UCM main office located at 919 Reserve Drive, Suite 118 in Roseville. Rosetti was present. Rosetti told them he does marketing and recruits loan officers, and was not engaged in unlicensed activity. They asked him for a copy of his employment

agreement. He provided a copy of an old employment agreement which was not signed and pertained to a previous Designated Officer. Rosetti told the investigators that the office had just moved and he would have to look for his most recent employment agreement. They asked him to send them a copy, but never received one. Later Rossetti told them that he was not sure how he was compensated.

12. While on the premises, Jones and Nishimura reviewed two open transaction files. The loan applications for both files were signed by Deane. In the purchase agreement for the property located at 4159 Pylos Way, it was noted under "Additional Financing Terms": "FHA financing w/ United Commonwealth Mortgage, Dino 916-960-5900..." Jones called Mark Farnsley, the real estate agent representing the buyers. Farnsley confirmed that he referred the buyers directly to Rosetti to represent them as their loan agent for financing their purchase. Farnsley disclosed that he referred clients regularly to Rosetti for mortgage loan financing. Later that day, Nishimura interviewed Farnsley in person. He confirmed that he had referred approximately four files to Rosetti that year. Some of the files had closed. Farnsley confirmed that Rosetti helped market and generate leads for Farnsley's realty office (McKayLand Realty). Any leads Rosetti obtained for Farnsley would be referred back to Rosetti for mortgage business, if the client did not already have a mortgage broker.

13. The investigators interviewed Deane. Deane explained that he had been a broker for a few months. He was a salesperson for over 20 years and had been in the business for 28 years. Rosetti had asked Deane to be the Designated Broker of UCM and he accepted. He explained that both he and Rosetti met with clients, since Rosetti has many contacts with realtors. They asked Deane how he monitors Rosetti to make sure he is not performing unlicensed acts, and Deane avoided responding, but said that Rosetti does not quote rates. In a subsequent interview on January 5, 2011, Deane told Jones that he does not know how Rosetti gets paid, and that only Kristin Rosetti knows. Deane acknowledged that he does not have access to the UCM bank account, has never asked Kristin Rosetti about Rosetti's compensation and would never ask. Nishimura showed Deane copies of purchase agreements showing that Rosetti was listed on the contracts. Deane claimed he had not previously seen the purchase agreements, and was unaware that, as the Designated Officer, he was supposed to review them.

14. Paul William Corsi testified at hearing. In June 2010, Mr. Corsi and his daughter, Christina Pierce, were attempting to purchase the real property at 253 AltaVista Avenue. Farnsley was their real estate agent and UCM was their mortgage broker. Corsi worked with Rosetti on obtaining a loan and Rosetti "orchestrated the loan process and under his guidance and direction we were pursuing the purchase.... Dino was trying to do the best he could to secure the loan for our daughter." Corsi met with Rosetti many times and spoke with him on the phone. Their attempts to get financing ultimately failed.

15. Marguerite Crespillo was the seller's agent on the 253 AltaVista Avenue property. In response to an inquiry from the Department, she wrote a chronological version of the transaction. She explained that Christina Pierce was a tenant at that property and submitted an offer through real estate agent Farnsley, "along with preapproval from Dino Rosetti..." Crespillo was interviewed on February 3, 2011, by Nishimura and Deputy Commissioner Debra Burnett. Crespillo told them that "Dino Rosetti with UCM was the lender on the Alta Vista property" and she had spoken with him when she originally found out he was the lender. The deal fell through, and Farnsley notified her on July 13, 2010, that Rosetti was unable to get the loan due to the buyers' ratios and credit score.

16. Kristen Thomas is an Escrow Officer at Stewart Title of Placer in Roseville. She testified that she processed the escrow for the real property, 70 Cedro Circle. She confirmed that in the purchase agreement for the property, it was noted under "Additional Financing Terms:" "FHA financing w/ United Commonwealth, Dino 916-960-5900 x 116..." Thomas confirmed that Rosetti sent her an e-mail on May 3, 2010, explaining HUD procedures regarding pre-disclosures and advising that "between the two of us we need to verify that the HUD is accurate and the fees are correct.... Once the pre-disclosure is correct, we let the lender know and they will generate the closing docs via e-mail within a couple of hours." He advised that if she had any questions, she should contact him, and provided his phone number. Thomas also verified that Rosetti was "kept in the loop" and copied on her e-mails regarding HUD documentation on this property.

17. Nishimura subpoenaed the UCM corporate bank records from Bank of the West for December 1999 and 2010. Dino Rosetti and Kristi Rosetti were the authorizing signatories on the account. Dino Rosetti had signed the majority of checks on the account. Many of the checks reference closings or properties, payroll and business expenses, and many are personal checks for items such as monthly checks to Rockland Montessori for tuition for a child of the Rosettis'. Additionally, there are numerous transactions on the debit card attached to the account for purchases at Safeway, Raleys, Costco, gas stations and restaurants. Dino Rosetti also signed checks made out to cash and to Deane.

18. Kristie Rosetti and Deane did not testify, did not call witnesses and did not submit any relevant documents. They did not submit any evidence of mitigation or rehabilitation. They attempted to assert their defenses by way of questions posed to witnesses on cross examination and statements made during argument and briefing. These "defenses" did not constitute evidence. The evidence was persuasive that Kristie Rosetti operated UCM for the direct and indirect financial benefit of herself, Dino Rosetti and their family, and that Dino Rosetti worked as a mortgage broker within the business. The evidence is persuasive that, at the request of Dino Rosetti and with full knowledge of Dino Rosetti's license revocation, Deane agreed to serve as the Designated Officer and supervising officer of the corporation. Deane did not

assume the responsibilities of those offices and did not challenge his “employers” when Dino Rosetti performed activities requiring a license.

LEGAL CONCLUSIONS

1. Business and Professions Code³ section 10177, provides in pertinent part that the commissioner may suspend or revoke the license of a real estate licensee or of a corporation if an officer, director, or person owning or controlling 10 percent or more of the corporation’s stock has:

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

[¶...¶]

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

3. Pursuant to section 10137:

It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him or her.... For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the

³ All statutory references are to the California Business and Professions Code, unless otherwise indicated.

provisions of this part relating to hearings.

4. California Code of Regulations, title 10, section 2725 provides:

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.
- (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- (g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

Cause for Discipline- Respondent UCM

5. Complainant established by clear and convincing evidence that UCM engaged in the business of a real estate broker within the State of California within the meaning of section 10131, subdivision (d). Complainant established by clear and convincing evidence in Factual Findings 3 through 10, and separately in Factual Findings 3 through 5 and 11 through 17, that UCM employed and compensated Dino Rosetti, an unlicensed individual whose broker's license had been revoked, to perform activities requiring a real estate license. UCM employed and compensated Dino Rosetti to act within the meaning of section 10131, subdivision (d), including the operation and conduct of a loan brokerage business with the public wherein Dino Rosetti solicited lenders and borrowers for loans secured directly or collaterally by liens on real property and arranged, negotiated, processed and consummated such loans. Complainant established that Dino Rosetti engaged in unlicensed activities in respect to the three properties identified in Factual Findings 3 through 17.

6. Pursuant to Legal Conclusions 1 through 5, and the Factual Findings underlying these conclusions, as well as Factual Finding 18, cause exists to suspend or revoke the license of UCM.

Cause for Discipline- Respondent Deane

7. Section 10159.2, subdivision (a), provides in pertinent part:

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.

8. Complainant established by clear and convincing evidence, in Factual Findings 3 through 10, and separately in Factual Findings 3 through 5 and 11 through 17, that Deane, as UCM's supervising broker failed to exercise reasonable supervision and control over the activities of UCM, by permitting and ratifying the unlicensed activities of Dino Rosetti and by failing to handle trust funds, supervise employees and implement policies, rules and systems to ensure that UCM complied with Real Estate Law and Regulations.

9. Pursuant to Legal Conclusions 1 through 4, and the Factual Findings underlying these conclusions, as well as Factual Finding 18, cause exists to suspend or revoke Deane's license.

Imposition of Discipline

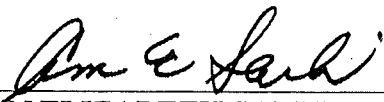
10. Respondents introduced no evidence of mitigation or rehabilitation. In aggravation, UCM's CEO, CFO and Secretary, Kristin Rosetti, was fully aware of her husband's license revocation, yet permitted him to engage in unlicensed activities through UCM. In aggravation, Deane also knew of Dino Rosetti's license revocation and abdicated his responsibilities as a broker and Designated Officer to Kristin and Dino Rosetti. Both respondents intentionally allowed Dino Rosetti to continue working as a mortgage broker so that they could benefit from the contacts and experience Dino Rosetti had garnered prior to his license revocation. UCM and Deane exposed their clients and the public to an individual who had been found responsible for fraud, dishonesty, false representation, negligence and incompetence. Accordingly, it would not be within the public interest to impose a period of suspension on either UCM's or Deane's license or to allow either one to retain a restricted license.

ORDER

The corporate real estate broker license issued to United Commonwealth Mortgage Inc. and all licensing rights under Real Estate Law are REVOKED.

The real estate broker license issued to George C. Deane and all licensing rights under Real Estate Law are REVOKED.

Dated: March 19, 2012


ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings