


**FILED**

**November 29, 2012**

BEFORE THE DEPARTMENT OF REAL ESTATE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA By 

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In the Matter of the Accusation of )  
DOREEN MARIE DURYEA, )  
Respondent. )  
\_\_\_\_\_ )

CASE NO. H-5639 SAC  
OAH NO. 2011120795


DECISION

The Proposed Decision dated October 17, 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 DEC 20 2012.

IT IS SO ORDERED 11/27/2012

Real Estate Commissioner

  
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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation against:

DOREEN MARIE DURYEA

Respondent.

Case No. H-5639-SAC

OAH No. 2011120795

**PROPOSED DECISION**

On September 10, 2012, in Sacramento, California, Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Michael B. Rich, Counsel, represented the complainant.

Respondent Doreen Marie Duryea represented herself.

Evidence was received. The matter was submitted and the record was closed on September 10, 2012.

**FACTUAL FINDINGS**

1. On June 28, 2011, complainant Tricia D. Sommers, a Deputy Real Estate Commissioner of the State of California, made the Accusation in her official capacity and filed it on July 12, 2011.
2. Respondent 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. The Department issued respondent a real estate salesperson license on October 23, 1981 and a real estate broker license on June 15, 2005. Respondent added the following DBAs to her license: In January 2008, she added DBA: Home N. loan 2 NE 1 .com; effective April 21, 2009, she added DBA: A&G Solutions; and effective September 21, 2009, she added DBAs: Home Savers, and Home Savers Loans. Respondent cancelled the

DBA A&G Solutions effective November 2, 2009, and cancelled the DBAs Home Savers and Home Savers Loans effective January 13, 2011.

4. Respondent added the following branch offices to her broker's license: effective March 23, 2009, 1600 Sacramento Inn Way, Suite 202, Sacramento 95815; effective April 21, 2009, 2510 Douglas Blvd., #205, Roseville 95661; and effective September 14, 2009, 5098 Foothills Blvd. #3441, Roseville 95747 and 1423 Dorchester Drive, Roseville 95678. Respondent canceled the branch license at Sacramento Inn Way effective June 15, 2009, and canceled the branch license at Douglas Blvd. effective September 14, 2009. She canceled the Foothills Blvd and Dorchester Drive branch licenses on May 23, 2011.

### *Background*

5. Respondent was employed by the Bank of America (BOA) for several years. At BOA, respondent had a "co-teammate" Brandon Goodwin (Goodwin). Goodwin did not hold a real state license. Respondent's daughter, Jacqueline Jones (Jones) also worked at BOA. She was licensed as a real estate salesperson on August 22, 2007. Both Goodwin and Jones were laid off by the BOA. In about September 2008, Goodwin began a business performing loan modifications, under the name A&G Solutions LLC. He hired Jones and other employees to solicit real estate brokers for business and to perform loan modifications. Jones was working as an office manager for Goodwin for about six months doing loan processing when she recognized that Goodwin was not working under a licensed real estate broker. She told him he needed to do this and in March 2009 he approached respondent and asked her to become supervising broker in charge of the business. Respondent agreed and left BOA.

6. On March 20, 2009, respondent opened an account at Wells Fargo Bank, Empire Ranch Branch, 25015 Blue Ravine Road, Folsom, California, Account No. 6122617266, in the business name A&G Ventures, LLC, (Bank Account #1), with herself, Jones and Goodwin as authorized signers. On March 23, 2009 respondent added a branch license at 1600 Sacramento Way Suite 202 and at some point before December 2010 added licensed real estate salespersons Jones and Tami Jilbert to her license. Respondent testified that she "followed every broker responsibility to the letter of the law, such as keeping the business address current, obtaining branch licenses, changing salesperson's license, fictitious business names, trust accounting, advertising approval, salespersons licenses and contracts, education, fiduciary duties to clients, to name a few. I took all my broker responsibilities seriously." But, on April 17, 2009, her mother died and her 91-year-old father needed her help. She found it extremely hard to work or focus and she "put Jacqueline Jones in charge of most of my real estate activities." On April 21, 2009, she added the DBA A&G Solutions to her license as well as a branch license at 2510 Douglas Blvd. (Finding 4).

7. A&G Solutions was incorporated on July 17, 2009. Goodwin was the CEO and sole officer of the company and Goodwin and respondent were working on an agreement to add respondent's name as an officer of the company. However, a legislative prohibition

against advance fee agreements for loan modification services had been enacted and was to become effective on October 11, 2009. In September 2009, Goodwin and respondent parted ways. According to respondent, Goodwin locked the office and retained the files and refused to return the files until she contacted a real estate attorney who was able to retrieve them. According to respondent, Goodwin continued to cash client checks and tried to sell existing files to another broker.

8. In September 2009, after Goodwin left the business, respondent renewed her broker's license, added two branch offices to her license, cancelled the Douglas Blvd. branch office, added the DBAs Home Savers and Home Savers Loans and advertised as Home Saver Loans a "Loan Audit Service." Jones was designated as "Director" in Home Saver Loans' correspondence to customers.

#### *Department Audit*

9. On December 15, 2010, the Department conducted an audit of respondent's businesses to determine whether trust funds were being handled properly. The audit covered the time period March 1, 2009 through October 31, 2010. Auditor Yanhua Xue (Xue) requested bank statements, signature cards and loan modification files. She noted that the only real estate licensees in the business were respondent, Jones and Tami Gilbert. Xue randomly selected transaction files and determined that during the period under review respondent was conducting loan modification activity and was collecting advance fees from borrowers. She noted that respondent was depositing trust funds into Bank Account #1.

10. Xue noted that Bank Account #1 was in the name A&G Ventures LLC, an unlicensed entity. The Department does not license limited liability companies as brokers or salespersons and the fictitious name [DBA] that had been added to respondent's license was A&G Solutions, not A&G Ventures. Further, the title of the account did not reflect that it was a client trust account and no one was listed as trustee on the account. Regulations required that the broker must be listed as the trustee.

11. Xue found that respondent did not comply with real estate laws regarding maintenance of a trust account. Respondent's records showed that she failed to do the following:

- A. Provide an accounting to the beneficiaries of the trust. Respondent did not provide the beneficiaries of the trust account with required quarterly accountings showing the advanced fee, type of service provided, cost, allocations and balances.
- B. Secure written consent from trust beneficiaries when the balance of the account was reduced below the aggregate of the advance fees held for clients.
- C. Keep control records, separate records and trust fund reconciliations with the date of funds received, from whom, date posted, amount deposited and the running balance.

D. Maintain a record for funds received and disbursed, with monies received, date received, from whom received, date deposited, balances, dispersal dates with check numbers and amounts and balances.

E. Reconcile accounts monthly.

12. XUE determined that on September 2, 2009, the balance in the account was \$13,427.95 below the aggregate of the advance fees held for clients

13. Xue reviewed the files respondent maintained for three consumers who had filed complaints with the Department: Rebecca and Jason Barron, Cecilia M. Sanchez and Jean Goldman and determined that the advance fees they had paid to respondent's business were not properly deposited or accounted for as set forth in Findings 10 and 11.

#### *The Sanchez Loan Modification*

14. On May 20, 2009, Cecilia M. Sanchez (Sanchez) spoke with Jesse Ochoa (Ochoa), a representative from A&G Solutions, regarding loan modification services for her property at 1053 Chenin Blanc Street, Los Banos, California. Ochoa was not licensed by the Department in any capacity. Sanchez did not testify at hearing. Sanchez filed a complaint with the Department, under penalty of perjury. The complaint stated in pertinent part:

- On 05-02-2009 I entered into a modification services agreement with A&G. That Mr. Jesse Ochoa Broker came to my home... and explain to me and my mom Isabel Mendez what him and A&G Solutions to help me keep my home. We went over the package of the agreement and the fee. If there was no modification made by the bank or myself that I would be entitled to my refund minus the amount of \$700. Mr. Ochoa told me verbal, and the advance fee agreement, on that date of 5/20/2009. I gave Mr. Ochoa almost half of the items he needed to start the modification. Recent pay stubs of employment. I told him I could not give him pay stubs till I started working on 05-23-09. I was getting unemployment at the time and I did give him the unemployment letter. All documentation that was needed from day one to 12-30-2009 that day and she needed by e-mail or fax... even gaved [*sic*] to her to Mr. Ochoa by my mother at his work in Livingston... Jackie Jones keeps on saying they help us but I was not help, in Dec. 2009 my mother call her and I call and e-mail Jackie about the trustee sale and she again asked me to send all documentation paystub when she knows I only work from 05- 09- 2009 at Oct-12- 2009. I e-mail her Dec 31, 2009 that the sale was on 01- 29- 2010. I declare bankruptcy on to 2-18-10. That's how the sale was stop.

15. Sanchez's complaint goes on to explain that when Ochoa visited her at her home on May 2, 2009, he told her not to make payments on her home loan because this would help the loan modification. She stopped making payments on his advice. She noted that the first offer she received to modify, on August 3, 2009, was reviewed by Jackie Jones who said not to sign it because it was not going to help her. Another offer on October 9, 2009 was again reviewed and she was told not to sign it. An offer on November 23, 2009 was received through Federal Express on December 4, 2009 and she was required to send it back by December 7, 2009. Pursuant to the terms of her agreement with A&G Solutions, she was required to send all documents to them first for their review. This offer did not change her payments and "only put everything in the back of the loan."

16. Sanchez filed the complaint with the Department to obtain a refund on the \$2,495 she had paid A&G Solutions because they had failed to obtain a loan modification for her.

17. The Client Advance Fee Agreement for Loan Modification Services (Advance Fee Agreement) which Sanchez signed stated that the contract was between the "broker Doreen Duryea DBA A&G Solutions" and Sanchez. The Advance Fee Agreement divided the loan modification work into two phases and entitled A&G Solutions to collect 100 percent of the advance fee after completion of phase 1. Phase 1 consisted of preparing the loan modification package and submitting it to the lender. Phase II consisted of negotiating with the lender and "achieving successful loan modification performance," as defined in the contract. The Advance Fee Agreement had not been approved by the Department. In May 2009, respondent had submitted a proposed Advance Fee Agreement to the Department. The proposed Advance Fee Agreement entitled A&G Solutions to 25 percent of the advanced fee after completion of phase 1 and 75 percent after completion of phase II services. The Department had advised respondent in writing that it had no objection to the proposed Advance Fee Agreement.

18. In contracting with Sanchez for loan modification services, respondent clearly used an Advance Fee Agreement which had not been approved by the Department and instead used an agreement that allowed A&G Solutions to "earn" 100 percent of its fee after gathering and submitting documentation to the lender. Respondent transferred 100 percent of Sanchez's advance payment from the "trust" account into the business account after submitting the loan modification package to the lender and well before staff began negotiations with the lender and Sanchez received a loan modification offer.

19. The Accusation alleges that respondent made false and misleading statements to Sanchez when she represented that she would negotiate with Sanchez's lender for favorable loan modification including lowest interest rates, lower monthly payments, principal reduction or other favorable terms. The false and misleading statements were made in order to induce Sanchez to pay the advance fee of \$2,495. The Accusation alleges that in fact, respondent failed to contact the lenders and/or failed to negotiate with the lenders, failed to provide the lenders all documentation or information necessary to negotiate the loan amount application, accepted the borrower's advance fee knowing that the borrower did not

qualify for loan modification or without any regard to whether the borrower qualified for loan modification or failed to communicate with the borrower regarding the status of the loan modification or about the information requested by the lenders.

20. This allegation was not proven by clear and convincing evidence. Copies of emails were in evidence which showed the A&G Solutions loan processor had contacted Sanchez requesting that she submit documents more timely and expressing surprise that she had not timely responded to a loan modification offer. Documents in the Sanchez file showed that A&G Solutions had obtained four loan modification offers for Sanchez and that she either did not act promptly or would not accept these loan offers. Sanchez's letter to the Department attests that the loan offers were not favorable to her and Jones told her not to accept them, but no evidence was produced to support this claim.

21. The Accusation also alleges that respondent was negligent or incompetent in the performance of acts related to the processing of Sanchez's loan modification application. For the reasons noted in Findings 19 and 20, this allegation was not proven by clear and convincing evidence.

#### *The Barron Loan Modification*

22. On August 14, 2009, Rebecca Barron and Jason Barron paid A&G Solutions \$2,000 as an advance fee for loan modification services for the loan on their property at 3053 McCook Way in Stockton, California. Neither of the Barrons testified at hearing. Rebecca Barron filed a complaint with the Department on April 30, 2010. She wrote the following under penalty of perjury:

A friend referred A&G Solutions to us. We spoke with a man named Gary Spiers who explained the process to us. Basically the service would cost \$3,495. The first initial payment of \$1,495 would need to be submitted with the original packet. If they could [not] help us, everything would be refunded except a \$795.00 processing fee for phase 1. The rest of the money was given to A&G by post dated checks in the amount of \$500 each, totaling \$2,000...

Our first conversation was [with] Jackie Jones ... she informed us via e-mail we would be good candidates for there [sic] services. I then started having troubles getting a hold of them. They finally contacted us via e-mail and said they were "behind on their lender follow-ups is" that was on August 28, 2009. On September 15, we received an e-mail stating they finally were able to do a follow-up on our account on September 14 and they will follow up again on September 22, 2009, which never happened. Everything they were telling us in e-mails was a lie.

I contacted my lender who told me that all A&G Solutions had done was to call to get authorization set up, so they could have access to our accounts.... I then received a letter from my lender stating they had denied our modification due to the fact that my husband was receiving unemployment benefits, and unemployment is not a source of steady income. However Jackie was aware of this situation, and said it would not be a problem. I tried reaching Jackie several times, but was unable to. She then informed me that the CEO of their company had emptied their bank accounts with clients in them (sic) and cannot be reached and that is why she's been too busy to contact us. I sent her a copy of the denial letter from our lender and a person named Megan Sanders said there was nothing they could do for us at this time. One of us would have to find a job in order for the lender to help and for us to contact them if we wish to use their services when the time comes. She also stated they could not offer a refund due to the fact they had no money and they were now called "Home Savers Loans." That was our last conversation.

Rebecca Barron was offered a job on November 16 at Home Depot in Manteca. We proceeded to apply for another loan modification directly to the lender. We were successful and are currently on a trial payment plan. We then received a letter from my lender stating Jackie Jones with A&G Solutions has our permission to receive personal information regarding our accounts.... I did contact him informing them they had no right to access our counts. In response I received a letter from Jackie Jones ... regarding owing the money for services they were unable to provide.... I feel A&G Solutions or Home Savers Loans which ever name they are going by these days owes a refund of \$2,495 . The contract states they are entitled to the first \$795 but they lied to us from the beginning. That way they can continue to cash our checks. The last \$1,000 I did cancel to my bank so they shouldn't have to refund the amount I feel they did not keep contact with us on purpose, so they could keep cashing our post dated checks without making any kind of progress on our loan modification.

23. The contract the Barrons and A&G Solutions entered into was dated August 10, 2009, was entitled "Client Advance Fee Agreement" and noted in the preamble that the contract was between the Barrons and "Doreen Duryea ('Broker') DBA A&G Solutions." The agreement provided that the Barrons would pay an "advance fee" of \$1,495 on the date the agreement was signed and would pay the remaining balance of \$2,000 within five days of the execution of the agreement. The contract provided that A&G Solutions was "entitled" to

the entire advance fee, minus \$100 when it submitted the loan modification request to the lender [at the end of phase 1]. This advanced fee contract had not been approved by the Department.

24. The Accusation alleges that respondent made false and misleading statements to the Barrons when she represented that she would negotiate with Barrons's lender for favorable loan modification including lowest interest rates, lower monthly payments, principal reduction or other favorable terms. The false and misleading statements were made in order to induce them to pay the advance fee of \$3,495. The Accusation alleges that in fact, respondent failed to contact the lenders and/or failed to negotiate with the lenders, failed to provide the lenders all documentation or information necessary to negotiate the loan amount application, accepted the borrowers' advance knowing that the borrowers did not qualify for loan modification or without any regard to whether the borrowers qualified for loan modification or failed to communicate with the borrower regarding the status of the loan modification or about the information requested by the lenders.

25. At hearing, Jones explained that the Barron loan modification started just before Goodwin left and communication was "down" while they attempted to get the files. She testified that A&G Solutions qualified the Barrons for a trial plan which they went through, then their income changed drastically and when they went for the final loan modification they did not qualify. Jones was not credible. She did not provide any documentation to support her version of events and communication records show that there was no communication with the lender after October 20, 2009, and no communication with the Barrons' after October 6, 2009.

26. This allegation was proven by clear and convincing evidence. The Barrons paid A&G Solutions \$1,495 and gave A&G Solutions four post dated checks for \$500 each, the last one dated October 12, 2009. Jones, who was calling herself "Jaclyn Jones, Supervising Manager for Doreen Duryea Broker of Record..." told Rebecca Barron that the Barrons were eligible for loan modification despite their unemployment, in order to induce them to enter into a contract for loan modification services. An unlicensed employee, Mira Artishuk, wrote an email to the Barrons on August 19, 2009, confirming receipt of the most recent unemployment award letter for Rebecca. In her notes she wrote that she had not submitted the file to the lender yet but considered "Phase 2 complete." On August 20, 2009, Arishuk's communication record indicates she submitted the loan modification packet to the lender. When the last of the post dated checks for \$500 was deemed "earned" upon submission of the loan modification application packet to the lender, A&G Solutions ceased negotiating the loan and ceased communicating with the Barrons.

27. The Accusation also alleges that respondent was negligent or incompetent in the performance of acts related to the processing of the Barron's loan modification application. For the reasons set forth in Findings 22 through 26, this allegation was proven by clear and convincing evidence.

### *The Goldman Loan Modification*

28. In July 2010, Jean Goldman (Goldman) was shopping for a loan modification on her property at 6 Commodore Drive 338, Emeryville, California. She was referred to Home Savers, called the office and spoke with Jones. Jones arranged to have Miranda Trujillo, an unlicensed individual, go to Goldman's home. Trujillo went to Goldman's home, explained the loan modification process and worked with Goldman in filling out paperwork. Trujillo suggested that she stop paying her mortgage. Goldman was given a "Home Saver Loans Loan Modification Service Contract" and a "Loan Audit Service Contract" (combined contracts). The combined contracts were designed to avoid the legal prohibition against advance fee contracts. The combined contracts provided that Goldman would pay \$3,995 to Home Saver Loans as a "Contract Fee for Loan Audit Services." The combined contract made it plain that the \$3,995 fee was for the service Jones provided in "auditing" the original loan documents. The combined contracts provided that if the audit did not discover any legal problems, Home Savers would "perform a standard loan modification as a subsidiary service... free of charge."

29. The loan audit service consisted of Jones reviewing the paperwork connected to the original loan to determine whether there were any legal loopholes or errors which would warrant referral of the loan to an attorney. Jones testified that she used a computer program created by an attorney and spent a few hours reviewing the loan documents. Jones held a GED and had been licensed as a real estate salesperson for about three years when she conducted the "loan audit" looking for violations of state and federal real estate laws. Jones reported to Goldman that the audit uncovered no violations of State or Federal law. She did not provide a copy of the audit to Goldman. Goldman requested that they proceed with the "free" loan modification.

30. Goldman paid Home Savers \$1,495 when she signed a contract in July; \$1,000 in August; \$1,000 in October and \$500 on November 29, 2010. However, after November 29, 2010, when Goldman had submitted all required documents to Home Savers and made all of her payments, she was never able to reach Home Savers. She tried to contact them by phone, e-mail and fax. No one returned her calls. She contacted her lender directly and the lender told her that her loan modification request had been denied. Goldman does not know whether the denial was based on the previous request she had made herself or whether Home Savers had submitted some documents on her behalf.

31. Goldman never got an accounting of the advance fees she paid to Home Savers. She requested a refund but Jones maintained that pursuant to the combined contracts the money was earned when the audit was completed. At hearing Jones testified that the contract with Goldman was "very clear" and "the full payment was due after the audit." She maintained that the contract was not an advance fee contract but a contract for auditing services. The evidence is unassailable that the combined contracts required an advance fee from Goldman for loan modification services before loan modification services were even undertaken. Home Savers attempted to disguise the loan modification fee as a fee for a valueless preliminary service.

32. Jones maintained that Home Savers did not stop communicating with Goldman after it received her last payment and that Goldman did not submit her paperwork timely to Home Savers and to the bank, which caused the bank to reject her application for loan modification. She submitted emails which showed that she had been requesting documents from Goldman as well as demanding the balance due of \$1,000 for the "loan audit fee." She wrote in an email to Goldman dated October 5, 2010 that Goldman's "modification will be placed on hold if the balance of the loan audit fee [that was completed on 8/23] is not received by 10/8." The emails Jones submitted only confirm Goldman's testimony that all communication stopped after she paid her last installment of \$1,000 on November 29, 2010.

33. Jones's arguments were not persuasive and demonstrated evasiveness and dishonesty. And, just as respondent had done, Jones tried to disavow all responsibility for using unlicensed persons to sell loan modifications. She also blatantly lied when she claimed that when Goodwin met with Trujillo in July 2010, Trujillo was working for Goodwin, not for Jones or respondent. Both Jones and respondent had testified that Goodwin and respondent parted ways almost a year earlier in September 2009. Moreover, Goldman was a very credible witness and her testimony was compelling.

34. Respondent testified that she had no responsibility for the Goldman loan modification. She claimed that she had no "dealings" with Home Savers. She had also made this claim to Department investigator Heather Nishimura (Nishimura) on March 22, 2011, during an interview. Respondent told Nishimura that she had nothing to do with the loan audit business and it was being done by an agent who had worked for her. Respondent told Nishimura, and repeated at hearing, that she had registered Home Savers as a DBA, but did so in order to complete the loan modifications that were outstanding when Goodwin left. She testified that she "was not doing anything other than finishing loan modifications" and the "people who had been working for her were carrying on with their own businesses." She told Nishimura that she did not remember which agent came to her with the loan audit program and acknowledged that she may have "lent her expertise" to this agent. Nevertheless, she claimed she was not operating that program and is not responsible for the audits conducted under it. She did not reveal to Nishimura that the agent she could not remember was her daughter, the person to whom she had entrusted her business.

35. The Accusation alleges that respondent made false and misleading statements to Goldman when she represented that she would negotiate with Goldman's lender for favorable loan modification including lowest interest rates, lower monthly payments, principal reduction or other favorable terms. The false and misleading statements were made in order to induce Goldman to pay the advance fee of \$3,995. The Accusation alleges that in fact, respondent failed to contact the lenders and/or failed to negotiate with the lenders, failed to provide the lenders all documentation or information necessary to negotiate the loan amount application, accepted the borrower's advance knowing that the borrower did not qualify for loan modification or without any regard as to whether the borrower qualified for loan modification or failed to communicate with the borrower regarding the status of the loan modification or about the information requested by the lenders. For the reasons set forth in

Findings 29 through 33, this allegation was proven by clear and convincing evidence. Respondent accepted advanced fees from Goldman for performance of a loan modification, ceased communicating with Goldman and the lender and did not negotiate with the lender on Goldman's behalf.

36. The Accusation also alleges that respondent was negligent or incompetent in the performance of acts related to the processing of the Goldman's loan modification application. For the reasons set forth in Findings 29 through 35, this allegation was proven by clear and convincing evidence.

### *Respondent's Defenses*

37. Respondent made many claims designed to absolve her of her responsibility as a broker to supervise persons working for her and her responsibility to abide by the laws and regulations governing real estate transactions. She blamed Wells Fargo Bank for using the wrong name A&G Solutions LLC on the "trust" account. She blamed Goodwin, an unlicensed person, for allowing the trust fund balance to reach a level below the combined deposits of the trust beneficiaries. She also blamed Goodwin's departure for failures or delays in submitting client applications and documents to lenders and in following up on loan modification applications. She blamed Goodwin for her use of loan modification agreements that were not approved by the Department, stating that she must have used old agreements that he had generated. She seemed to maintain that although she was the broker of record for A&G Solutions, Goodwin was operating a separate business with his own employees and she was not responsible at all for "his" employees. Respondent also maintained that she was not responsible for the activities of Jones and that she was not involved in Jones's business of loan auditing.

38. The overall theme of respondent's defense is that she should be allowed as a broker to work on only the files she chooses and that other activities that go on in a business for which she is the broker of record should not concern her. She does not understand why she is being blamed for the activities of other people, who are "beyond my control." She "did not tell anybody to do anything in my name that was a licensed activity." She has "free will" and her daughter was an "independent contractor," so she is not responsible for anything Jones had done. She does not understand why she is being charged with trust fund violations because the account was labeled a trust fund and she balanced the checkbook monthly and provided information to clients on when their post dated checks were cashed.

### *Imposition of Discipline*

39. In determining whether discipline should be imposed on a licensee, "The licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (*Arneson vs. Fox* (1980) 28 Cal. 3d 440, 449, fn. 2.) Respondent made no showing of mitigation or rehabilitation.

40. Respondent demonstrated either mendacity or a complete lack of understanding of her responsibilities as a licensed real estate broker. Moreover, she demonstrated no desire to assume these responsibilities. The Department cannot allow her to continue providing real estate services to consumers. Respondent has caused financial harm to two consumers by taking funds from them for illusory services and for services which were not rendered. She has violated laws and regulations governing the use of advance fee agreements in order to extract large sums of money from three consumers. She has failed to properly maintain and account for the funds of all of her clients. The public needs protection from incompetent as well as unscrupulous licensees. Allowing respondent to retain even a restricted license would not be in the best interest of the public.

### LEGAL CONCLUSIONS

1. Business and Professions Code<sup>1</sup> section 10131, subdivision (d), provides in pertinent part:

A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

(a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.

(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.

(c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or

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<sup>1</sup> All statutory references are to the California Business and Professions Code, unless otherwise indicated.

collaterally by liens on real property or on a business opportunity.

(e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

2. As set forth in the Findings, in 2009 and 2010 respondent was engaged in the business of a real estate brokerage pursuant to section 10131, subdivision (d).

3. As the licensed designated broker for A&G Solutions, respondent was responsible pursuant to sections 10159.2 and 10177, subdivision (h), for the supervision of the activities of the officers, agents, real estate licensees and employees of the entities under which she was doing business: Home N Loan 2 NE 1.Com., Home Savers, Home Savers Loans and A&G Solutions.

4. Pursuant to section 10177, subdivision (d), the Department may suspend or revoke a license for willful disregard or violation of sections 10000 et seq and 11000 et seq and for violations of the applicable sections of the California Code of Regulations (CCR), title 10 CCR.

### *Causes for Discipline*

#### *Use of Unapproved Advance Fee Contracts*

5. Pursuant to section 10026, subdivision (a):

The term "advance fee," as used in this part, is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, as that term is defined in Section 10027, before fully completing the service the licensee contracted to perform or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this division.

6. Section 10085<sup>2</sup> provides that it is unlawful and shall constitute grounds for disciplinary action, to claim, demand, or receive an advance fee for soliciting lenders on behalf of borrowers or for performing services for borrowers using an advance fee agreement not approved by the Department.<sup>3</sup> CCR, title 10, section 2970 requires submission of advance fee materials and agreements to the commissioner for approval.<sup>4</sup>

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<sup>2</sup> Section 10085.5 provides:

(a) It shall be unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee (1) for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan or, (2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of this part.

(b) This section does not prohibit the acceptance or receipt of an advance fee by any bank, savings association, credit union, industrial loan company, or person acting within the scope of a license issued to that person pursuant to Division 9 (commencing with Section 22000) of the Financial Code, in connection with loans to be secured directly or collaterally by a lien on real property. This section does not apply to charges made by title insurers and controlled escrow companies pursuant to Chapter 1 (commencing with Section 12340) of Part 6 of Division 2 of the Insurance Code. (c) A violation of this section is a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed six months, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000).

<sup>3</sup> Section 10085 provides:

The commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used. Should the commissioner determine that any such matter, when used alone or with any other matter, would tend to mislead he or she may, within 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published. Any person or entity using, disseminating, or publishing any matter which the commissioner has ordered, pursuant to this section, not to be used, published, or disseminated shall be guilty of a misdemeanor punishable by a fine not exceeding two thousand five hundred

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dollars (\$2,500) or by imprisonment in the county jail not exceeding six months, or both, for each such use, dissemination, or publication.

The commissioner may determine the form of the advance fee agreements, and all material used in soliciting prospective owners and sellers shall be used in the form and manner which he or she determines is necessary to carry out the purposes and intent of this part.

Any violation of any of the provisions of this part or of the rules, regulations, orders or requirements of the commissioner thereunder shall constitute grounds for disciplinary action against a licensee, or for proceedings under Section 10081 of this code, or both. These sanctions are in addition to the criminal proceedings hereinbefore provided.

<sup>4</sup> CCR title 10, section 2970 provides:

(a) A person who proposes to collect an advance fee as defined in Section 10026 in the Code shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use.

(b) Material used in advertising, promoting, soliciting and negotiating an advance fee agreement shall not be approved if it:

(1) Includes any representation which is false, misleading or deceptive.

(2) Does not set forth a specific, complete description of the services to be rendered for the advance fee.

(3) Does not set forth the total amount of the advance fee along with the date on which the fee shall become due and payable.

(4) Contains any provision which purports to relieve or exempt the person collecting the advance fee from an obligation to fulfill verbal commitments and representations made by employees and agents of the person contracting for the advance fee.

(5) Contains any provision which purports to give a guarantee that the real property or business opportunity in question will be purchased, leased or exchanged or that a loan secured by real property will be obtained as a result of the services rendered by the person collecting the advance fee.

7. As set forth in Findings 17 and 18, the contract between respondent and Cecilia M. Sanchez was an advance fee contract. As set forth in the Findings 22 and 23, the contract between respondent and Rebecca Barron was an advance fee contract. As set forth in Findings 28 through 31, the contract between respondent and Jean Goldman was an advance fee contract.

8. Cause was established by clear and convincing evidence to discipline respondent's license, in that respondent violated section 10085 and CCR, title 10, section 2970. As set forth in Legal Conclusion 7, respondent utilized advance fee agreements in contracting for modification of loans and collected advanced fees under those agreements, when the advance fee agreements had not been submitted to or approved by the Department.

#### *Trust Fund Violations*

9. Pursuant to sections 10145 and 10146, when a broker accepts funds belonging to others in connection with acts requiring a real estate license, these funds constitute trust funds. Pursuant to section 10146 and CCR, title 10, sections 2972 and 2832, subdivision (a), brokers are required to deposit advance fees into a trust account in the name of the broker as trustee and to comply with regulations requiring the broker to provide the principal with verified accountings of advance trust funds collected and disbursed, identifying agent name, principal's name, services rendered, trust accounts into which the funds were deposited, amount of the advanced fee, amounts disbursed, commissions paid, overhead, costs and profit.

10. It was established by clear and convincing evidence that respondent violated sections 10145, 10146 and 10177, subdivision (d), and CCR, title 10, section 2972. As set forth in the Findings, respondent collected advance fees from Rebecca and Jason Barron (Findings 13 and 14 through 18), Cecilia M. Sanchez (Findings 13 and 22 through 23) and Jean Goldman (Findings 13 and 28 through 32) and did not deposit the advance fees into a trust account in the name of the broker, or broker's fictitious business name if licensed in that name, as trustee.

11. As set forth in Findings 9 through 13, it was established by clear and convincing evidence that respondent failed to deposit and maintain trust funds in a trust account or neutral as depository, or to deliver said funds into the hands of the owners of the funds as required by CCR title 10, section 10145, in such a manner that as of September 2, 2009 there was a trust fund shortage in the approximate sum of \$13,427.95 in Bank Account # 1.

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(6) Does not set forth a definite date for full performance of the services promised under the advance fee agreement.

(c) Not less than 10-point type shall be used in advance fee agreements.

12. As set forth in Finding 9 through 13, it has been established by clear and convincing evidence that respondent violated CCR title 10, sections 2831, 2831.1 and 2831.2, in that she did not comply with regulations requiring accounting for trust funds. Specifically, respondent:

(a) Failed to maintain a control record for trust funds received and disbursed and other information required by section 2831 of the regulations (require record of trust funds received and disbursed in columnar form, in chronological sequence, dates of receipt, from whom received, the dates disbursed, dates deposited, identity at depository, daily balance), for trust funds deposited into Bank Account #1;

(b) Failed to keep a separate record for each beneficiary or transaction, accounting for all funds deposited into Bank Account #1 containing all of the information required by section 2831.1 of the regulations (broker shall keep separate record for each beneficiary for all funds including identity of parties, dates of deposit and withdrawal, amounts, check numbers, balance after posting) including an accurate daily balance after posting transactions;

(c) Failed to perform, at least once a month, reconciliation of all the separate beneficiary records with the control record, and failed to maintain a record of such reconciliations as required by section 2831.2 of the regulations (maintain written records of and perform once each month balance of all separate beneficiary funds and reconcile funds received funds disbursed) for Bank Account # 1 for trust funds deposited into this account; and,

(d) Failed to obtain the prior written consent of the principals for the reduction of the aggregate balance of trust accounts in Bank Account #1 to an amount less than the existing aggregate trust fund liability to the owners of said funds, as required by section 2832.1 of the regulations (requiring written consent of every principal whose funds in the account shall be obtained by broker prior to each disbursement which reduces the balance of funds in account to an amount less than the existing trust fund aggregate liability of broker to all owners of funds).

13. Cause was established to discipline respondent's license, pursuant to Legal Conclusions 10, 11 and 12, jointly and separately.

*Misrepresentations*

14. Section 10176 provides in pertinent part;

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she 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.

(b) Making any false promises of a character likely to influence, persuade, or induce.

[¶...¶]

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

[¶...¶]

15. As set forth in Findings 24 through 26, cause was established by clear and convincing evidence to discipline respondent's license, for a violation of section 10176 in respect to the loan modification of Rebecca and Jason Barron.

16. As set forth in Findings 35 and 36, cause was established by clear and convincing evidence to discipline respondent's license, for a violation of section 10176 in respect to the loan modification of Jean Goldman.

17. Cause was not established to discipline respondent's license for a violation of section 10176 in respect to the loan modification of Cecilia Sanchez (Finding 20).

*Negligence or Incompetence*

18. Pursuant to section 10177, subdivision (g):

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who

has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

19. As set forth in Finding 27 cause was established by clear and convincing evidence to discipline respondent's license, for a violation of section 10177, subdivision (g) in respect to the loan modification of Rebecca and Jason Barron.

20. As set forth in Finding 36 cause was established by clear and convincing evidence to discipline respondent's license, for a violation of section 10177, subdivision (g) in respect to the loan modification of Jean Goldman.

21. Cause was not established to discipline respondent's license for a violation of section 10177, subdivision (g) in respect to the loan modification of Cecilia Sanchez (Finding 21).


*Imposition of Discipline*

22. As set forth in Findings and particularly in Findings 37 through 40, respondent introduced no evidence of mitigation or rehabilitation, and it would be contrary to the public interest to allow her to remain licensed.

ORDER

The real estate broker license issued to Doreen Marie Duryea and all licenses and licensing rights issued to Doreen Marie Duryea are REVOKED.

Dated: October 17, 2012

  
ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings