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FILED

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DEPT. OF REAL ESTATE

By



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of
REYNALDO AGUIAR ROSA,
Respondent.

No. H-05811-SD
ACCUSATION

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the Department of Real Estate ("Department" or "DRE") of the State of California, for cause of Accusation against REYNALDO AGUIAR ROSA ("Respondent" or "ROSA") is informed and alleges in her official capacity as follows:

1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a Supervising Special Investigator, makes this Accusation against Respondents.
2. All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

LICENSE HISTORY

3. Respondent has been licensed by the Department as a real estate broker ("REB"), DRE license identification number ("License ID") 01269498, from on or about February 13, 2015, through the present, with Respondent's license scheduled to expire on February 12, 2027, unless renewed. According to Department records to date, Respondent has no branch offices, employs no

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1 salespersons, but the following fictitious business names (“dba(s)”) are currently active and licensed
2 to Respondent:

- 3 a. “I Offer Realty,” active as of May 30, 2017;
- 4 b. “The Realty,” active as of February 13, 2015;
- 5 c. “Remodeling Realty,” active as of September 12, 2016;
- 6 d. “Reynaldo Rosa.com, Reynaldo Rosa Realty,” active as of February 13,
7 2015; and
- 8 e. “U Offer Realty,” active as of May 30, 2017.

9 **BROKERAGE: ROSA**

10 4. At all times mentioned, in San Diego County, Respondent acted as a real estate
11 broker, conducting licensed activities within the meaning of Code section 10131(a): selling and
12 buying real property for others. At all times mentioned, Respondent conducted such licensed
13 activities for compensation or in expectation of compensation.

14 **FACTS DISCOVERED BY DRE**

15 5. On or about August 9, 2023, the DRE received a complaint from H.A.^{1/} regarding
16 Respondent ROSA, alleging that on or about May 6, 2023, H.A. met Respondent at an open house,
17 at which time Respondent represented that he was offering 1% of the purchase price as a credit if
18 Respondent represented H.A. in a transaction as the buyer’s agent. On May 11, 2023, H.A. sent
19 Respondent a text message requesting the details on the credit. Respondent replied on May 12, 2023,
20 stating that Respondent would assist H.A. in writing an offer and negotiating a deal on a property
21 H.A. liked, and that once the offer was accepted, escrow would be opened, and “[w]ithin 24 hours
22 of escrow being opened, I [ROSA] will instruct escrow to draft an amendment where I will credit
23 you 1% of the purchase price towards your closing cost/down payment.” On May 14, 2023, H.A.
24 sent another text to Respondent with an example, stating, “[I]f I purchase a property for 800k you
25 will credit me 8k towards my closing costs/down payment regardless of who is the lender or
26 anything else. Right?” Respondent replied, “Correct! I don’t care who the lender is or what the
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28 ^{1/} Initials are used in place of an individual’s full name to protect their privacy. Documents containing an individual’s full name will be provided during the discovery phase of this case to Respondent and/or his attorney(s), after service of a timely and proper request for discovery on Complainant’s counsel.

1 property address is. As long as I write the offer, you get a credit in escrow :).” H.A. then decided to
2 work with Respondent.

3 6. On May 22, 2023, Respondent wrote an offer of \$825,000.00 on a property for sale
4 located at 5102 Fino Drive, San Diego, California (“Fino Property”), using a form titled California
5 Residential Purchase Agreement and Joint Escrow Instructions (“RPA”), which was digitally signed
6 by H.A. using DocuSign on May 22, 2023. H.A.’s offer was accepted by the seller, and the seller
7 signed the RPA on May 23, 2023. The RPA provided for close of escrow 21 days after acceptance.

8 7. After the seller accepted, Respondent informed H.A. that it was not possible to
9 provide buyers with a credit towards their down payment and/or closing costs. In addition, because
10 the closing costs for the sale of the Fino Property were less than the one percent (1%) credit amount
11 of the purchase price, Respondent promised to give H.A. a check for the remaining credit a day after
12 escrow closed. After escrow closed, Respondent refused to give H.A. the check for the credit and
13 failed to fulfill his promise. H.A. only received a \$2,500 credit from Respondent’s dba, The Realty,
14 through escrow.

15 8. On or about June 12, 2023, H.A. and the seller of the Fino Property signed Addendum
16 No. 1 to the RPA, adjusting the purchase price of the Fino Property to \$820,000.00.

17 9. On or about June 13, 2023, Respondent signed an Amended Selling Broker
18 Commission Confirmation, to issue Respondent’s dba, The Realty, a selling broker commission of
19 \$20,500.00.

20 10. On or about June 14, 2023, Respondent signed an Escrow Amendment for the Fino
21 Property to authorize and instruct the escrow holder to credit the sum of up to \$2,500.00 to the
22 buyer’s, H.A.’s, account and that this sum represented the “Selling Agent Credit toward closing
23 costs.” The seller and H.A. also signed this Escrow Amendment.

24 11. On or about June 15, escrow closed on the Fino Property. The Buyer’s Final
25 Settlement Statement for the Fino Property showed a \$2,500 credit to H.A., the buyer, from The
26 Realty. According to both Respondent and H.A., no other credits were given to H.A. through escrow
27 or after escrow closed. Respondent promised H.A. one percent (1%) of the purchase price as a
28 credit, or \$8,200.00, however H.A. only received a \$2,500.00 credit, which was 0.3 percent of the

1 purchase price. Respondent told H.A. that the lender would not allow Respondent to credit H.A.
2 more than his closing costs.

3 12. Respondent informed the DRE that paying H.A. any additional funds outside of
4 escrow is illegal under section (5)(E) of the RPA for the Fino Property—titled “LIMITS ON
5 CREDITS TO BUYER”—indicating Respondent was not allowed to credit H.A. any additional
6 amount in excess of the Lender’s Allowable Credit. Respondent did not provide any written
7 documentation that the lender did not allow him to credit the buyer with additional funds from his
8 commission. Respondent stated it was the lender's policy. However, during a telephone call imitated
9 by the DRE’s special investigator with a representative of the buyer’s lender for the Fino Property,
10 the representative stated that the lender has no policy or any written document that would have
11 prevented Respondent from crediting \$8,200.00 to the buyer, H.A.

12 **VIOLATIONS OF THE REAL ESTATE LAW – CAUSES FOR DISCIPLINE**

13 13. In the course of the activities described above in Paragraph 4, and based on the facts
14 discovered by the DRE, as alleged in Paragraphs 5 through 12 above, Respondent acted in violation
15 of the Code and Regulations as follows.

16 **FIRST CAUSE OF ACCUSATION: BREACH OF FIDUCIARY DUTIES**

17 14. The Complainant realleges and incorporates by reference all of the allegations
18 contained in paragraphs 1 through 13 above with the same force and effect as though fully set forth
19 herein.

20 15. Complainant is informed and believes and, on such information and belief, alleges
21 that beginning in or around early May 2023, Respondent ROSA devised a plan, scheme, and/or
22 course of conduct in which Respondent solicited potential buyers of residential real property by
23 representing to these potential buyers that if they hired, retained, and/or agreed to work with
24 Respondent as their real estate agent in purchasing residential property, and an offer made through
25 Respondent to purchase a property was accepted, that Respondent would credit the buyer one
26 percent (1%) of the purchase price towards the buyer’s closing costs, and that at the time of making
27 such representation to potential buyers, Respondent either never intended to credit buyers he
28 represented in a transaction one percent of the purchase price, or Respondent had no reasonable

1 ground for believing that one percent of the purchase price could be credited to buyers he represented
2 in a transaction, and without confirming that Respondent could actually credit such buyers with one
3 percent of the purchase price towards a buyer's closing costs. Complainant is informed and believes
4 and, on such information and belief, alleges that Respondent made the representations about
5 crediting the buyers he represented one percent of the purchase price to induce H.A. to hire, retain,
6 and/or agree to work with Respondent as H.A.'s real estate agent to represent H.A. in the purchase
7 of real property.

8 16. H.A. believed Respondent's representations about crediting one percent of the
9 purchase price towards H.A.'s closing costs to be true, and in reliance on Respondent's
10 representations, H.A. was induced to hire, retain, and/or agree to work with Respondent as H.A.'s
11 real estate agent to represent H.A. in the purchase of real property, and H.A. did not seek to hire,
12 retain, and/or agree to work with any other real estate agent as a result.

13 17. On or about May 22, 2023, H.A. signed the following real estate documents prepared
14 by Respondent: Disclosure Regarding Real Estate Agency Relationship, with H.A. signing as the
15 buyer, and Respondent signing as the agent as his dba, The Realty; Possible Representation of More
16 Than One Buyer or Seller – Disclosure and Consent, with H.A. signing as the buyer, and Respondent
17 on behalf of his dba The Realty signing as the buyer's brokerage firm; and the RPA containing
18 H.A.'s offer to purchase the Fino Property, with H.A. signing as they buyer, and Respondent on
19 behalf of his dba The Realty signing as the buyer's brokerage firm. By executing the aforementioned
20 real estate documents, among other writings and/or communications, H.A. and Respondent
21 confirmed and agreed that Respondent would act as H.A.'s real estate agent for the purpose of
22 making offers to purchase real property, negotiating the purchase of such properties, reaching
23 agreement with the seller of such property to purchase the property, and representing H.A.
24 throughout the process, including the close of escrow, disbursement of funds, and beyond if
25 necessary. Through such agreement between H.A. and Respondent, they created a fiduciary
26 relationship between H.A. and Respondent.

27 18. At all relevant times herein, while acting as the real estate broker and agent of H.A.,
28 Respondent owed H.A. fiduciary duties, including, but not limited to the following: duty of

1 reasonable care and skill; duty of good faith; duty of loyalty; duty of diligence; duty to avoid
2 conflicts of interest; duty of fullest disclosure of all material facts concerning a transaction that
3 might affect H.A.'s decision to purchase; and duty not to obtain any advantage over H.A. by virtue
4 of the agency relationship between Respondent and H.A.

5 19. Respondent ROSA breached his fiduciary duties to H.A. by: first, promising to H.A.
6 that Respondent would credit H.A. one percent of the purchase price towards H.A.'s closing costs,
7 either without intending to credit H.A. one percent of the purchase price, or by having no reasonable
8 ground for believing that one percent of the purchase price could be credited to H.A.; second, by
9 informing H.A. after the seller accepted H.A.'s purchase offer on the Fino Property, that it was not
10 possible to provide H.A. with a credit towards H.A.'s down payment and/or closing costs; and third,
11 after escrow closed, by refusing to pay H.A. one percent of the purchase price of the Fino Property,
12 or \$8,200.00.

13 20. Respondent's acts and/or omissions constitute negligent and/or intentional breaches
14 of his fiduciary duties to H.A., and are grounds for the suspension or revocation of Respondent's
15 real estate license and license rights under the provisions of **Code sections 10177(d) and/or**
16 **10177(g).**

17 SECOND CAUSE OF ACCUSATION:

18 NEGLIGENT OR INTENTIONAL MISREPRESENTATION

19 21. The Complainant realleges and incorporates by reference all of the allegations
20 contained in paragraphs 1 through 20 above with the same force and effect as though fully set forth
21 herein.

22 22. As a result of Respondent having created and established a real estate agency
23 relationship with H.A., Respondent owed fiduciary duties to H.A., and by virtue of H.A. having
24 placed confidence in the fidelity and integrity of Respondent, and in entrusting Respondent to act
25 as H.A.'s real estate agent in the purchase and acquisition of real property, a confidential relationship
26 existed at all times herein mentioned between H.A. and Respondent.

27 23. Complainant is informed and believes and on such information and belief alleges
28 that, despite having voluntarily accepted the trust and confidence reposed in him by H.A. with regard

1 to H.A.'s purchase and acquisition of real property, and in violation of this relationship of trust and
2 confidence, Respondent abused the trust and confidence of H.A.

3 24. Complainant is informed and believes and on such information and belief alleges that
4 Respondent employed the aforementioned plan, scheme, and/or course of conduct of promising
5 potential buyers that hired, retained, and or worked with Respondent as their real estate agent that
6 Respondent would credit buyers with one percent of the purchase price of properties, either with the
7 intent to deceive and defraud buyers he represented, or by making such representations recklessly
8 and without regard for the truth of such statement, or without reasonable grounds for believing that
9 one percent of the purchase price could be credited to buyers he represented H.A. Respondent made
10 such representations and or promises about crediting buyers with one percent of the purchase price
11 with the intent to induce H.A. to hire, retain, and or work with Respondent as his real estate agent
12 in H.A.'s purchase and acquisition of real property.

13 25. H.A. in fact reasonably relied on Respondent's promise to credit H.A. one percent of
14 the purchase price of real property purchased by H.A., and in light of the fiduciary relationship
15 created by Respondent, and Respondent being licensed as a real estate broker. H.A. believed H.A.'s
16 representations to be true, and in reliance on Respondent's representations, H.A. was induced to
17 hire, retain, and/or work exclusively with Respondent as H.A.'s real estate agent in completing the
18 purchase of the Fino Property. After the seller of the Fino Property accepted H.A.'s purchase offer,
19 Respondent informed H.A. that it was not possible to provide H.A. with a credit towards H.A.'s
20 down payment and/or closing costs. After escrow closed, Respondent refused to pay H.A. one
21 percent of the purchase price of the Fino Property, or \$8,200.00, as originally promised.

22 26. In the course of the activities described above in Paragraph 4, and based on the facts
23 alleged in Paragraphs 5 through 25 above, Respondent's acts and/or omissions were in violation of
24 **Code sections 10176(a), 10176(b), 10176(i), 10177(j), and 10177(d) and/or 10177(g)**, and
25 constitute cause for the suspension or revocation of Respondent's real estate license and license
26 right under the provisions of **Code sections 10176(a), 10176(b), 10176(i), 10177(j), and 10177(d)**
27 **and/or 10177(g)**.

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1 THIRD CAUSE OF ACCUSATION:

2 USE OF UNLICENSED FICTITIOUS BUSINESS NAMES

3 27. The Complainant realleges and incorporates by reference all of the allegations
4 contained in paragraphs 1 through 26 above with the same force and effect as though fully set forth
5 herein.

6 28. On or about February 29, 2024, the DRE confirmed that Respondent was advertising
7 his real estate services on the Internet and social media web pages, using the unlicensed fictitious
8 business names: "The Realty Everything Real Estate," "Everything Real Estate Property and Asset
9 Management Group," "The Realty Inc," and "www.therealtyinc.com." None of these fictitious
10 business names are listed in the DRE's current licensing records, and none are licensed to
11 Respondent. Respondent's use of unlicensed fictitious business names to advertise real estate
12 services requiring a license is in violation of **Code section 10159.5 and Regulation 2731** and
13 constitutes cause for the suspension or revocation of Respondent's real estate license and license
14 right under the provisions of **Code sections 10177(d) and/or 10177(g)**

15 COSTS

16 (INVESTIGATION AND ENFORCEMENT COSTS)

17 29. **Code section 10106** provides, in pertinent part that in any order issued in resolution
18 of a disciplinary proceeding before the DRE, the Commissioner may request the administrative law
19 judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed
20 the reasonable costs of investigation and enforcement of the case.

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