

COPY

FILED
JAN 11 1988

DEPARTMENT OF REAL ESTATE

By C. Westbrook
C. Westbrook

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
SYLVIA MARY CHAKMAKJIAN,)	NO. H-5859 SF
Respondent)	OAH NO. 29761

DECISION

The Proposed Decision dated December 14, 1987 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 February 1, 1988.

IT IS SO ORDERED January 4, 1988.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By: John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	CASE No. H-5859 SF
)	
SYLVIA MARY CHAKMAKJIAN,)	OAH No. N-29761
)	
)	
Respondent.)	
)	

PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, heard this matter on October 8, 1987 at San Jose, California.

Vera Winter Lee, Counsel, represented the complainant.

Respondent was present and was represented by Mark L. Strombotne, Hoge, Fenton, Jones & Appel, Inc., 60 South Market Street, San Jose, California 95113-2396.

Evidence was received, the hearing was closed and the record was left open for the submission of briefs. Complainant's Closing Argument was received on October 23, 1987 and was marked as Exhibit 11. Respondent's Closing Brief was received on October 30, 1987 and was marked as Exhibit D. Complainant's Reply Brief was received on November 6, 1987 and was marked as Exhibit 12. Thereafter, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

The complainant, Edward V. Chiolo, a Deputy Real Estate Commissioner of the State of California, made and filed the accusation in his official capacity.

II

Sylvia Mary Chakmakjian (hereinafter "respondent") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

III

Respondent was licensed as a real estate broker and was acting in the employ of Paul Hopkins and Associates, Inc., a California corporate real estate broker, through August 4, 1985. Respondent had the right to renew her real estate broker license from August 4, 1985 until September 13, 1985, when a renewed real estate broker license was issued to her.

IV

At all times mentioned, JJD Properties, a joint venture comprised of James B. Schmiedt, Carol A. Schmiedt, Daurice F. Graves, James Symons and Nancy F. Symons (hereinafter "sellers") owned the real property known and described as 3629 Calvin, San Jose, California (hereinafter "the Property").

V

On or about July 20, 1985, respondent prepared or caused to be prepared a Real Estate Purchase Contract and Receipt for Deposit (hereinafter "the contract") which contained an offer from respondent "or her assinges" [sic] to purchase the Property, and which contained the following representation, among others:

"Received from Sylvia M. Chakmakjian or her assinges [sic]...the sum of three thousand dollars \$3,000.00 evidenced by...personal check...payable to A.R.C. Hopkins to be held uncashed until acceptance of this offer as deposit on account of the purchase price."

VI

Respondent presented the offer to Phillip D. Jacklin, Jr., listing agent and representative of the sellers, at Jacklin's office on Sunday, July 21, 1985. Also present at the meeting between respondent and Jacklin were James Schmiedt and Nancy Symons. James Schmiedt and Nancy Symons signed the "Acceptance" portion of the contract in respondent's presence. In addition, Nancy Symons signed the contract on behalf of her husband James J. Symons as his attorney-in-fact. Jacklin retained the original of the contract in order to obtain the signature of Daurice Graves. At no time did respondent dispute the authority of Nancy Symons to sign the contract on behalf of her husband; respondent testified that she believed the signatures of all five sellers were necessary for the offer to be accepted.

VII

Pursuant to Business and Professions Code section 10145(c), respondent was required to immediately deliver the deposit check to her broker or to comply with other directions from him for treatment of the funds. Once delivered to her employing broker, 10 California Administrative Code section 2832 would permit the broker to hold the deposit check uncashed until acceptance of the offer since, pursuant to the contract, the offeror (respondent) had given written instructions that the check was not to be cashed until acceptance of the offer and the offerees (sellers) had been so informed at the time respondent presented the offer. However, respondent failed to deliver the \$3,000 deposit check to her employing broker, Paul Hopkins, on Monday, July 22, 1985, the first business day after presentation of the offer. Respondent contends that, since she was acting as her own agent in the transaction, and since the offer was to be deemed revoked if not accepted and a signed copy of the contract delivered to respondent within two days of the contract date, she was under no obligation to deliver the deposit check to the broker, since there was no signed acceptance by the July 22, 1985 deadline. Respondent's contention is not persuasive; her obligation to turn the check over to her broker arose before the expiration of the offer.

VIII

Respondent testified that she considered her offer to sellers to be revoked when she did not receive an acceptance signed by all sellers by Monday, July 22, 1985, and that she "did not know" what happened to the original \$3,000 deposit check. However, respondent prepared and signed a Contract Supplement/Addendum, dated July 26, 1985 (hereinafter "contract addendum") purporting to address one of the contingencies in the original contract. Furthermore, respondent prepared or caused to be prepared a personal check for \$3,000, dated July 26, 1985, payable to "ARC Realtors" with the notation "3629 Calvin Ave." Thus, crediting respondent's testimony that the original offer was revoked on July 22, 1985, it is clear that the offer was reinstated on July 26, 1985, and the \$3,000 deposit check should have immediately been turned over to her employing broker. Instead, respondent retained the check in her file on the property. Hopkins testified that retaining a check uncashed in a file is a violation of his office procedure, but he suspected that it "happens occasionally."

IX

Respondent and sellers' agent, Jacklin, continued to negotiate over the release of contingencies to the contract after July 26, 1985. On August 9, 1985, Jacklin called the office of A.R.C. Hopkins to speak to respondent and was told she was not there. Jacklin then spoke to the person handling the A.R.C. Hopkins Trust Account and learned that respondent's check had not been deposited into the trust account. On August 14, 1985, respondent telephoned Jacklin and confirmed that the deposit check was still in her file and had not been given to her broker. Jacklin assured respondent that all of the sellers had signed the contract, and respondent told Jacklin that she would instruct her secretary to turn the check in for deposit to the A.R.C. Hopkins Trust Account. On August 20, Jacklin spoke directly to Hopkins and learned that the check had not yet been deposited; in fact, Hopkins knew nothing about the transaction. Hopkins discussed the sale with respondent, and she informed him that the reason she had not given him the check was because she had never received a signed copy of the contract demonstrating acceptance by all the sellers. On August 22, 1985, respondent turned in the \$3,000 deposit check dated July 26, 1985 for deposit to the A.R.C. Hopkins Trust Account. Respondent told Hopkins that she had been told by Jacklin that all the sellers had signed the contract and therefore she was willing to make the \$3,000 deposit even though she still did not have a copy of the completed contract.

On or about August 21, 1985, respondent had her secretary send a release form to Jacklin along with a note requesting that the sellers sign a release of respondent's deposit. The note stated that the release was being requested due to complications in obtaining financing.

X

On September 5, 1985, respondent's deposit check was returned by the bank due to insufficient funds. Respondent testified that the reason the check bounced was because it had been deposited by A.R.C. Hopkins without authorization, i.e., before acceptance of the contract. This testimony is not credible and is contradicted both by Respondent's statements to Hopkins and by her conduct in requesting a release of the deposit from the sellers; clearly, if respondent believed there was no valid contract, then a release of the deposit would have been unnecessary.

XI

Respondent's failure to immediately turn the \$3,000 deposit check over to her employing broker in July, 1985, and her subsequent failure to fund the check after permitting it to be deposited in the A.R.C. Hopkins Trust Account constitute knowing false and misleading representations by respondent to the sellers of the Property as to the form and treatment of the deposit toward the purchase of the Property. As a result of respondent's conduct, the \$3,000 deposit was unavailable as liquidated damages as provided pursuant to the contract.

Respondent argues that, since the contract was never signed by all five of the sellers, there was no valid acceptance and therefore no obligation to deposit the \$3,000 check ever arose. This argument is not persuasive as a factor in mitigation. As previously noted, respondent's obligation to remit the check to her employing broker arose even before the original deadline for acceptance of the contract. Furthermore, respondent contends that her state of mind is "critical" in determining whether she knowingly misled anyone. In that regard, respondent believed the offer had been accepted when she gave the \$3,000 check to Hopkins and authorized him to deposit it; at that point, she had an obligation to assure that adequate funds existed to cover the check.

Respondent's conduct is particularly disturbing in that respondent is herself a licensed real estate broker and should be familiar with the procedures for treatment of funds to be held in trust for a principal, as well as the obligation of an employing broker to retain control of such funds.

DETERMINATION OF ISSUES

Clear and convincing evidence to a reasonable certainty establishes cause for disciplinary action pursuant to Business and Professions Code section 10177(d) and 10 California Administrative Code section 2785(a)(9) by reason of Findings VII-XI.

ORDER

All licenses and license rights of respondent Sylvia Mary Chakmakjian under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) are revoked. However, a restricted real estate salesperson license shall be issued to respon-

dent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee within thirty (30) days of the effective date of this decision. The restricted license issued to respondent shall be subject to all the provisions of Section 10156.7 of the Business and Professions Code and to the following restrictions imposed under authority of Section 10156.6 of said Code:

A. Respondent's license shall be suspended for a period of thirty (30) days.

B. The restricted license may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which bears a substantial relationship to respondent's fitness or capacity as a real estate licensee, or upon evidence satisfactory to the Commissioner that respondent has violated the provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

C. Respondent shall submit with her application for license under an employing broker or her application for a transfer to a new employing broker a statement signed by the prospective employing broker which shall certify:

1. That the decision of the Commissioner which granted the right to a restricted license has been read;
2. That close supervision will be exercised over the licensee of activities for which a real estate license is required.

D. Respondent shall, within six (6) months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that she has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for hearing pursuant to the Administrative Procedure Act to present such evidence.

F. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license, nor the removal of any of the restrictions of the restricted license, until two (2) years have elapsed from the date of issuance of the restricted license.

DATED: December 14, 1987

Catherine B. Frink
CATHERINE B. FRINK
Administrative Law Judge

CBF:hrs

COPY

FILED
SEP 03 1987

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By C. Westbrock
G. Westbrock

In the Matter of the Accusation of
SYLVIA MARY CHAKMAKJIAN,

Case No. H-5859 SF
OAH No. N 29761

Respondent(s)

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Santa Clara
County Service Center, 1555 Berger Dr., Rm 181, San Jose, CA 95112
(1 day hearing)
on the 8th day of October, 1987, at the hour of 9:30 a.m., or as soon thereafter
as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the hearing officer conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: September 3, 1987

By [Signature]
VERA WINTER LEE, Counsel

COPY

1 VERA WINTER LEF, Counsel
2 DEPARTMENT OF REAL ESTATE
3 185 Berry Street, Room 5816
4 San Francisco, CA 94107-1770

FILED
JUL 08 1987

5 (415) 557-3220

DEPARTMENT OF REAL ESTATE

By C. Westbrook

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 In the Matter of the Accusation of)
11 SYLVIA MARY CHAKMAKJIAN,)
12 Respondent.)
13 _____)

No. H-5859 SF
ACCUSATION

14 The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
15 Commissioner of the State of California, for cause of accusation
16 against SYLVIA MARY CHAKMAKJIAN (respondent) is informed and
17 alleges as follows:

18 I

19 The complainant, EDWARD V. CHIOLO, a Deputy Real Estate
20 Commissioner of the State of California, makes this accusation in
21 his official capacity.

22 II

23 The respondent is presently licensed and/or has license
24 rights under the Real Estate Law (Part 1 of Division 4 of the
25 California Business and Professions Code) (Code).

26 / / / / / /

27 / / / / / /

1 III

2 At all times mentioned below, respondent was licensed as
3 a real estate broker and was acting in the employ of Paul Hopkins
4 and Associates Inc., a California corporate real estate broker.

5 IV

6 At all times mentioned, JJD Properties, a joint venture
7 comprised of James B. Schmiedt, Carol A. Schmiedt, Daurice F.
8 Graves, James Symons, and Nancy F. Symons (sellers) owned the real
9 property known and described as 3629 Calvin, San Jose, California
10 (the Property).

11 V

12 On or about July 20, 1985, respondent prepared or caused
13 to be prepared a Real Estate Purchase Contract Receipt for
14 Deposit (Deposit Receipt) which contained an offer from respondent
15 "or her assinges" [sic] to purchase the Property, and which
16 contained the following representation, among others:

17 "Received from Sylvia M. Chakmakjian or her
18 assinges [sic]...the sum of three thousand dollars
19 \$3,000 evidenced by...personal check...payable to
20 A. R. C. Hopkins to be held uncashed until
21 acceptance of this offer as deposit on account
22 of the purchase price.

23 VI

24 Respondent failed until on or about August 22, 1985 to
25 deliver a deposit check in the amount of \$3,000.00, payable to
26 A.R.C. Hopkins, to her employer to be held until acceptance. On
27 or about September 3, 1985, respondent's employer was advised that:

1 respondent's deposit check was being returned by respondent's bank
2 due to insufficient funds.

3 VII

4 Respondent's acts or omissions alleged above constitute
5 knowing false or misleading representations by respondent to the
6 sellers of the Property as to the form and treatment of the
7 deposit toward the purchase of the Property.

8 VIII

9 By reason of the facts alleged above, respondent has
10 been guilty of acts or omissions in violation of Section
11 2785(a)(9) of Title 10 of the California Administrative Code which
12 constitutes grounds for disciplinary action under the provisions
13 of Section 10177(d) of the Code.

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

21 *Edward V. Chiolo*

22 _____
23 EDWARD V. CHIOLO
24 Deputy Real Estate Commissioner

25 Dated at San Francisco, California
26 this 8th day of July, 1987.
27