

FILED

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

AUG - 7 2015
BUREAU OF REAL ESTATE
By K. Contreras

In the Matter of the Accusation of)
)
 ALLYN MARYVONNE TERPSTRA,)
 and MICHAEL ALLEN TERPSTRA,)
)
 Respondents.)

No. H-6005 SAC
OAH No. 2013101056
(As to ALLYN MARYVONNE TERPSTRA, Only)

DECISION


The Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings dated July 3, 2015, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter as to Respondent ALLYN MARYVONNE TERPSTRA, Only.

The Decision suspends or revokes the real estate license and/or license rights; however, the right to a restricted real estate license is granted to Respondent ALLYN MARYVONNE TERPSTRA.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on AUG 31 2015.

IT IS SO ORDERED August 7, 2015

REAL ESTATE COMMISSIONER


By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ALLYN MARYVONNE TERPSTRA, and
MICHAEL ALLEN TERPSTRA,

Respondents.

Case No. H-6005 SAC

OAH No. 2013101056

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 9 and 10, April 29, and June 19, 2015, in Sacramento, California.

Mary F. Clarke, Counsel, represented Tricia Sommers (complainant), a Deputy Real Estate Commissioner with the Bureau of Real Estate (Bureau),¹ Department of Consumer Affairs, State of California.

Frank M. Buda, Attorney at Law, represented Allyn Maryvonne Terpstra (respondent), who was present throughout the hearing.

Michael Allen Terpstra (Mr. Terpstra) surrendered his license to the Bureau and the Bureau accepted his surrender. Mr. Terpstra did not appear or testify at the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on June 19, 2015.

¹ On July 1, 2013, the Department of Real Estate became the Bureau of Real Estate within the Department of Consumer Affairs. The term "Bureau" as used herein includes the Department of Real Estate and all actions taken by the Department of Real Estate before it became the Bureau of Real Estate.

AMENDMENTS TO THE ACCUSATION

At the hearing, complainant deleted the following allegations and charges from the Accusation: (1) paragraph 8, page 3, lines 9 through 11; (2) Business and Professions Code section 10176, subdivisions (a) and (i), in paragraph 9, on page 3, line 20; (3) paragraph 10(d), on page 4, lines 3 through 5; and (4) Business and Professions Code section 10176, subdivisions (a), (i) and (j), in paragraph 10(e), on page 4, line 6.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.
2. On June 5, 1991, a real estate salesperson license was issued to respondent. Respondent's license was in full force and effect at all times relevant to the charges set forth in the Accusation. Complainant seeks to discipline respondent's license based upon her conduct described below.

May 2011 Short Sale Agreements

3. Respondent is married to Mr. Terpstra. At all times relevant to the allegations in this matter, both respondent and Mr. Terpstra worked for Dance Hall Investors, Inc., doing business as Keller Williams Realty (Keller Williams). Respondent worked in Keller Williams' residential division. Mr. Terpstra worked in Keller Williams' commercial division.
4. Respondent and Mr. Terpstra owned property located on Yerba Way in Lincoln, California (Yerba Way property). Respondent's in-laws, Karen and Dennis Terpstra, owned property located on Monteverde Lane in Lincoln, California (Monteverde property). At a time not specified at the hearing, Karen Terpstra was a licensed real estate salesperson and worked for Keller Williams. In addition, at a time not specified at the hearing, respondent and Mr. Terpstra began living in the Monteverde property, and Karen and Dennis Terpstra began living in the Yerba Way property. JPMorganChase (Chase) held mortgage loans on these properties and the loan amounts exceeded their appraised values. Respondent and Mr. Terpstra, and Karen and Dennis Terpstra sought to sell these properties through short sales to avoid foreclosure.
5. Brian Hood is a licensed real estate broker. Mr. Hood worked in the commercial division of Keller Williams with Mr. Terpstra. In or about April 2011, Mr. Terpstra told Mr. Hood that Chase had agreed that the Monteverde and Yerba Way properties could be sold through short sales. Mr. Hood agreed to be the listing agent on both properties. Respondent prepared listing agreements for the properties, and in or about the beginning of May 2011, Mr. Hood signed them. Respondent did not give Mr. Hood copies of the signed listing agreements. Mr. Hood did not inspect the properties or list them on the Multiple Listing Service (MLS). He did not receive any offers and did not show the

properties. He understood from Mr. Terpstra that there was a buyer for the Monteverde property. According to Mr. Hood, respondent did all the paperwork to obtain Chase's approval for the short sales, including putting together the financials for respondent and Mr. Terpstra, and Karen and Dennis Terpstra. Mr. Hood understood that respondent was going to do all the "transaction coordination" until Chase approved the short sales.

6. On May 27, 2011, respondent sent a Fax Cover Sheet to Chase regarding the sale of the Yerba Way property. Instead of using her actual name on the Fax Cover Sheet, respondent identified herself as "Eleene Jordan" and "Aleene Jordan." The letterhead of the Fax Cover Sheet, in relevant part, stated:

Keller Williams Realty

Brian Hood

Assistant: Eleene Jordan

916.960.0765

916.622.3947

(Bolding in original.)

The body of the Fax Cover Sheet stated:

On behalf of my clients I am submitting a short sale request.
Attached are the following items:

- 1) 3rd Party Authorization
- 2) Purchase Contract & Short Sale Addendum
- 3) Proof of Funds
- 4) MLS CMA

Please let me know what other items that may be necessary to expedite this process.

Thank you.

Aleene Jordan – 916-960-0765

On behalf of Brian Hood

Keller Williams Realty

On the 3rd Party Authorization referenced in respondent's Fax Cover Sheet, typed on the blank line for the identity of the broker was "Keller Williams – Brian Hood / Eleene Jordan." With the Fax Cover Sheet, respondent sent to Chase a copy of a check, No. 205, dated May 12, 2011, from the buyer made payable to Chicago Title Co. in the amount of \$5,000.

7. With the Fax Cover Sheet, respondent also sent to Chase a Residential Purchase Agreement dated May 16, 2011. The pre-printed page 8 of that agreement included a box for the signatures of the real estate brokers who were representing the sellers and buyer. Typed into that box as the broker for both the sellers and buyer was "Keller Williams." Randall Dawson's name was typed in as the real estate agent representing the buyer, and Brian Hood's name was typed in as the real estate agent representing the sellers. The purported signatures of Mr. Dawson and Mr. Hood were handwritten next to their typed names.

8. Mr. Dawson was a licensed real estate salesperson who worked in the commercial division of Keller Williams. On or about June 9, 2011, he received a voice message from a "Richard" at Chase, who wanted to discuss a short sale offer with Mr. Hood, and was calling Mr. Dawson in an effort to reach Mr. Hood. Mr. Dawson did not know why Chase was calling him. He gave Mr. Hood the message from Chase.

9. On June 10, 2011, Mr. Hood called Chase back. He was told that Chase's inquiry was about the offer on the Monteverde property. Mr. Hood did not know anything about that offer. When he got off the telephone, he looked through his emails to try to figure out what was going on. He found an email from Mr. Terpstra dated May 28, 2011, which forwarded an email from respondent dated May 27, 2011, regarding the "Yerba Way property contract." Mr. Hood had not looked at these emails before June 10, 2011. Respondent's May 27, 2011 email to Mr. Terpstra stated:

Can you forward to Brian ... I don't have his email address....

Hi Brian – just wanted you to have a copy of the purchase contract that I faxed to Chase today for the [Yerba Way property].

Thanks for your help on these deals

Regarding Monteverde – the bpo/appraisal was received by Chase today – I was told that a negotiator will be assigned next week possibly.

Have a great weekend --- talk to you later.. Allyn

Attached to respondent's email was the Fax Cover Sheet and the documents described in Findings 6 and 7. Mr. Hood forwarded the emails and attachments to Mr. Dawson.

10. Mr. Hood and Mr. Dawson were not aware of the May 16, 2011 Yerba Way Residential Purchase Agreement before June 10, 2011. Neither of them signed that agreement. Neither of them authorized respondent, Mr. Terpstra, or anyone else to sign their names on their behalf.

11. Mr. Hood's and Mr. Dawson's names were also signed without their knowledge or consent on a May 9, 2011 Residential Purchase Agreement for the Monteverde property. The same buyer had agreed to purchase both the Yerba Way and Monteverde properties. The same check that was used as the earnest money deposit for the sale of the Yerba Way property – No. 205, dated May 12, 2011, from the buyer made payable to Chicago Title Co. in the amount of \$5,000 – was also used for the earnest money deposit on the sale of the Monteverde property.

12. Mr. Dawson asked Mr. Terpstra why his name had been forged on the Residential Purchase Agreements. Mr. Terpstra responded that it was to "help" Mr. Dawson out.² Mr. Terpstra told Mr. Dawson that he (Mr. Terpstra) was not able to list the properties or write the offers, so he got Mr. Hood to be the listing agent and used Mr. Dawson's name so that Mr. Dawson would "make some money" on the deals. According to Mr. Dawson, Mr. Terpstra stated that he (Mr. Terpstra) and respondent were going to do all the work, they would pay Mr. Dawson a portion of the commission for letting them use his license, and the rest of the commission was to be "kicked back" to Mr. Terpstra.

13. Mr. Dawson called respondent to ask about his forged signature on the Residential Purchase Agreements. According to Mr. Dawson, respondent "sounded surprised" when he told her that he did not know about the transactions. She indicated that Mr. Terpstra had told her that Mr. Dawson was "on board the whole time." She told Mr. Dawson that she was going to call Mr. Terpstra to "get to the bottom of 'this.'"

14. Mr. Hood asked respondent to cancel his listing agreements on both properties. Respondent prepared Cancellations of Listing. On June 13, 2011, as authorized by Mr. Hood, respondent signed Mr. Hood's name on the cancellation for the Monteverde property. Later that same day, Mr. Hood signed the cancellation for the Yerba Way property. At the hearing, Mr. Hood did not know whether respondent was aware that Mr. Hood's name had been forged on the Residential Purchase Agreements.

15. Mr. Dawson told Kenneth Dick, the Sales Manager of Keller Williams, about Mr. Dawson's name being forged on the Residential Purchase Agreement for the Yerba Way property.

² The statements attributed to Mr. Terpstra by Mr. Dawson and other witnesses were admitted as administrative hearsay as to respondent, and have been considered to the extent permitted by Government Code section 11513, subdivision (d), which, in relevant part, provides:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

16. Mr. Dick functions as Keller Williams' Compliance Officer. In light of the provisions of Keller Williams' E & O insurance policy, Keller Williams had an office policy that its real estate agents were not allowed to represent themselves in transactions involving the sale of their own homes. In addition, if a Keller Williams real estate agent entered into a listing agreement or represented a buyer or seller who signed a residential purchase agreement, Keller Williams' office policy required the agent to turn in those documents to Keller Williams within three business days after they were signed. If a Keller Williams real estate agent received a deposit check relating to a sale of property, the agent was required to log the check with the broker and turn it in within three days after receipt. It was Keller Williams' policy that a single deposit check could not be used for two separate property purchases. These Keller Williams policies applied whether the sale was a standard sale or a short sale.

17. Respondent did not comply with Keller Williams' policies with regard to the Yerba Way and Monteverde properties. Respondent did not turn in to Keller Williams the Listing Agreements signed by Mr. Hood, the May 2011 Residential Purchase Agreements with Mr. Dawson's and Mr. Hood's forged signatures, or the May 12, 2011 deposit check.

18. After Mr. Hood's listing agreements were canceled, Chase approved respondent to be the real estate agent representing both the sellers and the buyer for the Monteverde property, even though the sellers were respondent's in-laws. Page 8 of the original May 9, 2011 Residential Purchase Agreement was replaced by a page 8 dated June 28, 2011, signed by respondent as the agent for the sellers and buyer. The transaction closed on July 29, 2011. Respondent received a commission of \$19,334. Keller Williams received a commission of \$6,955. Keller Williams authorized the disbursement of these commissions.

19. In August 2011, Lynda Descheemaeker, a residential real estate salesperson employed by Keller Williams, became respondent and Mr. Terpstra's real estate agent for the sale of the Yerba Way property. In February 2012, the sale of the Yerba Way property closed. The Yerba Way property was purchased by a different buyer from the buyer who purchased the Monteverde property and was originally shown on the May 16, 2011 Yerba Way Residential Purchase Agreement.

Respondent's Testimony

20. Respondent testified that, in May 2011, she knew that she could not represent herself and her husband on the short sale of their own Yerba Way property. She believed that she could not represent Karen and Dennis Terpstra on the sale of their Monteverde property because they were her in-laws. She and her husband knew of a potential investor for both properties through their involvement in the Basque club. Mr. Terpstra told her that Mr. Hood had agreed to represent the sellers and Mr. Dawson had agreed to represent the buyer on the properties. She spoke to Mr. Hood and prepared the listing agreements for him to sign. She did not speak to Mr. Dawson prior to June 10, 2011.

21. Respondent prepared the May 2011 Residential Purchase Agreements for both properties showing Mr. Dawson and Mr. Hood as the real estate agents representing the parties. She obtained the buyer's signature on the agreements. After obtaining the buyer's signature, she gave the agreements to Mr. Terpstra to obtain Mr. Dawson's and Mr. Hood's signatures. Mr. Terpstra returned the agreements to respondent with signatures for Mr. Dawson and Mr. Hood. Respondent asserted that she did not know that Mr. Dawson's and Mr. Hood's signatures on those agreements were forged.

22. Respondent described herself as the "transaction coordinator" for Mr. Hood on the sales of the Yerba Way and Monteverde properties. She asserted that, because she was not acting as the real estate agent on the properties, she did not expect to be paid a commission. She asserted further that she was helping her in-laws sell the Monteverde property because they were elderly and overwhelmed by the situation, and she loved them as her parents. She asked Mr. Terpstra to forward the signed May 16, 2011 Yerba Way Residential Purchase Agreement to Mr. Hood because she did not have his correct email address, and she believed that his and Mr. Dawson's signatures on that agreement were "legitimate."

23. Respondent faxed the signed Residential Purchase Agreement for the Yerba Way property to Chase. She admitted that she identified herself as Mr. Hood's assistant and used a "fictitious name" on the Fax Cover Sheet. She asserted that she used the fictitious name because she felt that if her name appeared on the Fax Cover Sheet it would suggest that she was "part of" the agreement, and she did not want to "slow the process down." She admitted that using a fictitious name was "dumb," "wrong," and a "poor choice." She was "embarrassed" and "sorry" that she did something so "stupid."

24. In June 2011, Mr. Dawson called her and said that he had not signed the Residential Purchase Agreements. He was "upset" and did not want anything to do with the sales. Respondent described herself as "shocked" when she heard that Mr. Dawson had not signed the agreements. She testified that she was "mad" at her husband, but thought that he was just trying to help Mr. Dawson earn a commission.

25. At the hearing, respondent described the different ways in which short sales were handled when compared to standard sales. She stated that sellers' agents often did not see the property before signing a listing agreement for a short sale. According to respondent, in order to determine an acceptable price on a short sale, the lender would generally obtain a third-party broker price opinion, which included a comparative market analysis of value. In addition, although agents normally obtained deposit checks for standard sales, because it often took months to process short sales and lenders often did not approve them, agents sometimes took only copies of deposit checks from buyers. Respondent testified that she did not receive any deposit checks from the buyer for the Yerba Way and Monteverde properties in May 2011. Instead, she only received a copy of the buyer's May 12, 2011 deposit check for both properties.

26. Respondent pointed to the Short Sale Addendum signed for both properties as supporting her receipt of only a copy of the May 12, 2011 deposit check. That addendum, in relevant part, stated:

B. TIME PERIODS: BUYER'S DEPOSIT CHECK

1. Time Periods in the Agreement for inspections, contingencies, covenants, and other obligations: (i) shall begin as specified in the Agreement; or (ii) (if checked) shall begin the Day After Seller delivers to Buyer written notice of Short-Sale Lenders' consent.
2. Buyer's deposit check shall be: (i) immediately handled as provided in the Agreement; or (ii) (if checked) held uncashed until the Day After Seller delivers to Buyer a written notice of Short Sale Lenders' consent. (Bolding and capitalization in original.)

27. According to respondent, because the two boxes in this provision of the Short Sale Addendum were checked, she did not take custody of the buyer's May 12, 2011 deposit check when the Residential Purchase Agreements were first signed in May 2011. The lender approved the short sale of the Monteverde property, but the short sale of the Yerba Way property was cancelled. The May 12, 2011 deposit check was deposited into escrow prior to the close of the sale of the Monteverde property.

28. Respondent testified that she was "shocked" when the Chase negotiator approved her to be the agent for both the sellers and the buyer on the sale of the Monteverde property, because she was the sellers' daughter-in-law. The Chase negotiator stated that, as long as she was not a "blood relative," she was allowed to represent the sellers and the buyer. She also informed the Chase negotiator that she and her family were living in the Monteverde property at the time of the sale. This fact did not seem to "matter" to the Chase negotiator. Respondent testified further that it was the Chase negotiator who suggested that, instead of drafting a new Residential Purchase Agreement for the sale of the Monteverde property, a new page 8 should just be substituted for the earlier page 8 that included Mr. Dawson's and Mr. Hood's purported signatures. According to respondent, she did as she was "directed" by the Chase negotiator.

29. Respondent admitted that Mr. Hood did "nothing" as the listing agent for the Monteverde and Yerba Way properties. She also recognized that Mr. Hood and Mr. Dawson did no work as the real estate agents representing the parties on the sales of the properties. But respondent asserted that the buyer was "viable" and that she (respondent) had enough information from Mr. Terpstra and the buyer to process all the paperwork as Mr. Hood's "assistant" until the lender accepted the short sales. Respondent worked with Karen Terpstra, a licensed real estate salesperson, to determine the sales price of the Monteverde

property. According to respondent, once the lender approved the short sales, Mr. Hood would then have had to inspect the properties and complete the disclosures.

30. Respondent admitted that she did not submit the short sale paperwork for the Monteverde and Yerba Way properties to Keller Williams before she received Chase's approval for the short sales. But she asserted that her failure to submit the paperwork to Keller Williams within the time frames testified to by Mr. Dick was not to hide her personal involvement in the transactions. According to respondent, because so many short sales did not "come to fruition," she generally did not submit paperwork for short sale transactions until the lenders had approved them. Keller Williams allowed respondent to represent her in-laws and the buyer on the July 29, 2011 closing of the Monteverde short sale, and accepted the paperwork, even though it was not submitted until after Chase approved the short sale. Keller Williams allowed Ms. Descheemaeker to represent respondent and Mr. Terpstra on the subsequent short sale of the Yerba Way property.

Discussion

31. Forged Signatures on the May 2011 Residential Purchase Agreements. At the hearing, respondent denied that she had any knowledge that the signatures of Mr. Dawson and Mr. Hood on the May 2011 Residential Purchase Agreements for the Yerba Way and Monteverde properties were forged. She asserted that if she had known that Mr. Hood had not signed or authorized his signature on the Yerba Way Residential Purchase Agreement, she would not have emailed that signed agreement to him.

32. When all the evidence is considered, complainant did not establish by clear and convincing evidence that respondent forged the signatures of Mr. Dawson or Mr. Hood on the May 2011 Residential Purchase Agreements, or that she knew that those signatures were forged. There was no direct evidence that respondent was aware that Mr. Dawson's and Mr. Hood's signatures on the Residential Purchase Agreements were not authorized. Mr. Dawson testified that respondent seemed genuinely surprised when he told her that he had not signed or authorized his signature on the agreements. Mr. Hood did not know whether respondent knew that his signature was not authorized. Complainant did not call Mr. Terpstra to testify. Complainant did not present sufficient evidence to establish that respondent was aware that Mr. Dawson's and Mr. Hood's signatures on the May 2011 Residential Purchase Agreements were not authorized.

33. Deposit Check. The Accusation alleged that, on or about May 11, 2011, "unbeknownst to Keller Williams and contrary to Keller Williams's policy and procedures," respondent "accepted a deposit check from [the buyer] in the amount of about \$5,000.00 but failed to immediately deliver said deposit check to Keller Williams, in violation of Section 10145(c) of the Code." Complainant failed to establish this allegation by clear and convincing evidence. There was no competent evidence to show that respondent received a deposit check from the buyer on or about May 11, 2011.

34. Fictitious Name on Fax Cover Sheet to Chase. At hearing, respondent argued that complainant did not allege in the Accusation that respondent used a fictitious name on the May 27, 2011 Fax Cover Sheet to Chase regarding the sale of the Yerba Way property to rely upon this allegation as a basis for disciplining respondent's license. In addition, respondent argued that she was not questioned about this issue during the interviews she had with the Bureau prior to the filing of the Accusation to put her on notice that this allegation would be included as part of the Accusation.

35. With regard to the Yerba Way property, the Accusation, as amended, alleged:

On or about May 16, 2011, in connection with the activities described in Paragraph 4, above, Respondents, unbeknownst to Keller Williams and contrary to Keller Williams' policy and procedures, entered into a Purchase Agreement to short sale Respondents' own property located on Yerba Way, Lincoln CA (herein "Yerba Way") with [the buyer], showing the buyer's agent as Dawson and the seller's agent as Hood, when in fact neither Dawson or Hood were ever involved in the transaction in any way, rather Respondents represented themselves, as sellers, and the buyer, in violation of Section 10177(j) of the Code.

Paragraph 4 of the Accusation alleged:

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate licensees for compensation or in expectation of compensation within the State of California within the meaning of Section 10131(a) of the Code, including the operation and conduct of a real estate brokerage wherein Respondents sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity.

36. Government Code section 11503, subdivision (a), sets forth what must be included in an accusation and, in relevant part, provides:

The accusation ... shall be a written statement of charges that shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his or her defense. It shall specify the statutes and rules that the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of those statutes and rules.

37. Government Code section 11503 “establishes the constitutionally required notice to the accused of the standards by which the accused’s conduct is to be measured.” (*Smith v. State Board of Pharmacy* (1995) 37 Cal.App.4th 229, 241.) In an administrative proceeding, the complainant is “not bound by strict rules of pleading So long as the respondent is informed of the substance of the charge and afforded the basic, appropriate elements of procedural due process, he cannot complain of a variance between administrative pleadings and proof.” (*Stearns v. Fair Employment Practice Commission*. (1971) 6 Cal.3d 205, 213.) As the court explained in *Stoumen v. Munro* (1963) 219 Cal.App.2d 302, 306-307:

The principal objective of the law is to safeguard the licensee against an accusation which does not sufficiently enable him to prepare his defense. [Citations.] Adherence to technical rules of pleading is not required. [Citation.] As stated by Mr. Justice Peters, in the case last cited: “In these administrative proceedings the courts are more interested with fair notice to the accused than they are to adherence to the technical rules of pleading. [Numerous citations.]”

38. The Accusation does not include any allegations relating to respondent’s May 27, 2011 fax cover sheet to Chase. In fact, nowhere in the Accusation is respondent accused of engaging in any wrongful actions with regard to Chase. Given the way the Accusation is drafted, complainant cannot rely upon this unpled allegation, standing alone, as a separate cause for disciplinary action.

39. But, as respondent conceded, complainant may rely upon respondent’s use of a fictitious name in her May 27, 2011 Fax Cover Sheet to Chase as a matter in aggravation to support the charges alleged in the Accusation. Respondent fully addressed this issue at the hearing. The Accusation alleged that respondent’s actions with regard to the May 16, 2011 Residential Purchase Agreement for the sale of the Yerba Way property showed that she engaged in conduct that constituted dishonest dealing. Respondent’s use of a fictitious name in her May 27, 2011 Fax Cover Sheet supports complainant’s allegation that respondent acted in a dishonest manner to hide that she, and not Mr. Dawson or Mr. Hood, was performing all the work on the sale of the Yerba Way property.

40. Failure to Disclose the Transactions to Keller Williams. The Accusation alleged that: (1) on or about April 8, 2011, respondent, “unbeknownst to Keller Williams, drafted a Residential Listing Agreement” which “ostensibly” listed Mr. Hood as the listing agent for the Monteverde property, when in fact respondent, and not Mr. Hood, represented the sellers, Karen and Dennis Terpstra; (2) on or about May 9, 2011, respondent, “unbeknownst to Keller Williams, drafted and negotiated a Residential Purchase Agreement” for the short sale of the Monteverde property, which showed Mr. Dawson and Mr. Hood as representing the parties, when in fact respondent represented both the sellers and buyer; and (3) on or about May 16, 2011, respondent, “unbeknownst to Keller Williams and contrary to Keller Williams’ policy and procedures,” entered into a Residential Purchase Agreement for

the short sale of the Yerba Way property, which showed Mr. Dawson and Mr. Hood as representing the parties, when in fact respondent represented both the sellers and buyer. Complainant alleged that respondent's conduct was dishonest in the above regards.

41. Respondent argued that complainant did not establish these allegations against her because she was not acting as a real estate salesperson in the expectation of compensation when she put together the "paperwork" for the Monteverde and Yerba Way properties to obtain Chase's approval of the short sales. Instead, she was acting only as a "transaction coordinator." Respondent's argument was not persuasive. As she admitted, she did all the work on the short sales of the Yerba Way and Monteverde properties. Mr. Hood and Mr. Dawson did none of the work. Mr. Hood gave respondent no direction or instructions. The closure of the short sales was of significant benefit to respondent and her family. She and Mr. Terpstra avoided foreclosure on their Yerba Way property. She and her family were allowed to reside in the Monteverde property after it was sold.

42. When all the evidence is considered, complainant established by clear and convincing evidence that the documents respondent drafted for the short sales of the Monteverde and Yerba Way properties were intended to make Keller Williams and Chase believe that respondent, Mr. Terpstra, Karen and Dennis Terpstra, and the buyer were represented by unrelated real estate sales agents in arm's length transactions, when, in fact, respondent was acting as the agent for all the parties on both properties. Real estate licensees are expected to act with utmost integrity in all their interactions with the Bureau, their brokers, their clients, lenders, and the public. As the court explained in *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402, "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." Consequently, complainant established that respondent engaged in dishonest conduct with regard to the short sales of the Monteverde and Yerba Way properties.

43. Complainant did not, however, offer sufficient evidence to establish that respondent made a "substantial misrepresentation" as that term is used in Business and Professions Code section 10176, subdivision (a), or that she acted for more than one party in the transactions without the knowledge or consent of all parties thereto, in violation of Business and Professions Code section 10176, subdivision (d).

Appropriate Discipline

44. Respondent has been licensed as a real estate salesperson for 24 years. This is the first disciplinary proceeding the Bureau has brought against her license. There was no evidence that she had ever engaged in any other wrongful conduct in the past. She offered supportive reviews by satisfied customers.

45. In February 2012, respondent notified Keller Williams that she and Mr. Terpstra would be leaving Keller Williams. Respondent formally left Keller Williams in May 2012. Her employing broker is now Excel Realty, Inc. John Robinson, is the

broker/president of Excel Realty. He wrote a letter dated March 5, 2015, in support of respondent, which was admitted as administrative hearsay and has been considered to the extent permitted by Government Code section 11513, subdivision (d). According to Mr. Robinson, respondent "always delivers competent completed files in a timely manner." Her "services are heavily sought after among repeat and new clients largely due to her persistence in negotiation for their best interests, and extensive market knowledge." She is "extremely professional in her real estate business." In the three years that Mr. Robinson has been respondent's broker, he has "never received any complaints" about respondent. He is aware of this proceeding against respondent, and is willing to closely monitor and supervise her if she is granted a restricted license.

46. At hearing, respondent testified in a candid and humble fashion. She understood the Bureau's concerns with her and her husband's conduct in this matter. She explained that the issues that gave rise to the Accusation occurred at a very emotional time in her life. She has taken action to ensure that those issues will not arise again. She no longer has anyone sign documents outside of her presence. If she ever assists another agent in a transaction, she will ensure that she communicates directly with that agent. She is involved in her community and her children's schools. Respondent cooperated in the Bureau's investigation. Complainant failed to establish that respondent knew that the signatures of Mr. Dawson and Mr. Hood on the May 2011 Residential Purchase Agreements were not authorized. When all the evidence is considered, restricting respondent's license for five years under the terms and conditions set forth below would adequately protect the public interest, safety and welfare.

Costs

47. Complainant submitted two Certified Statement of Costs, requesting that respondent be ordered to pay the reasonable costs of investigation and enforcement in this case pursuant to Business and Professions Code section 10106. The first Certified Statement of Costs was submitted during the hearing on April 9, 2015. In it, complainant sought \$4,908.35 in enforcement costs for the time expended by complainant's counsel until the start of the hearing on March 9, 2015, and investigative costs in the amount of \$6,326.55, for total costs of \$11,234.90.

48. At the hearing on June 19, 2015, complainant submitted another Certified Statement of Costs, in which complainant requested that respondent be ordered to pay \$1,811.15 in additional enforcement costs incurred by complainant for the time expended by complainant's counsel after the first day of hearing.

49. Complainant objected to imposing on respondent the additional enforcement costs incurred after the hearing commenced. Complainant also objected to respondent being charged for costs related to the surrender of Mr. Terpstra's license.

50. In relevant part, Business and Professions Code section 10106, subdivision (c), provides that that investigative and enforcement costs that a respondent may be ordered to pay are those that are incurred by complainant "up to the date of the hearing." Consequently, by its terms, section 10106 does not permit complainant to collect from respondent any costs that were incurred after the hearing commenced. Respondent's objection with regard to complainant's request for such costs is sustained. In addition, respondent's objection as to charging her for any costs incurred with regard to Mr. Terpstra's surrender of his license is sustained. The remaining costs sought by complainant are reasonable given the allegations in this case and the work performed in the investigation and enforcement of this matter.

51. Respondent asserted that she is unable at this time to pay all the costs requested. She and Mr. Terpstra have three children ages 19, 17 and 11. Mr. Terpstra is currently working for a start-up business that has not produced much income. He does not make enough money to meet their household expenses. Although respondent works every day, her sales and commissions are not steady. Complainant's request for costs is addressed further in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving the grounds for discipline alleged in the Accusation by clear and convincing evidence to a reasonable certainty. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Business and Professions Code section 10050.1 provides:

Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

3. Pursuant to Business and Professions Code section 10176, a real estate license may be disciplined when a licensee has done any of the following:

(a) Making any substantial misrepresentation.

[¶] ... [¶]

(d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.

[¶] ... [¶]

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

4. Pursuant to Business and Professions Code section 10177, a real estate license may be disciplined when the licensee has done any of the following:

(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.

[¶] ... [¶]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.

5. Business and Professions Code section 10145, subdivision (c), provides:

A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

6. As set forth in Findings 39 through 42, respondent engaged in dishonest conduct with regard to the April 8, 2011 Residential Listing Agreement and May 9, 2011 Residential Purchase Agreement for the Monteverde property. Complainant therefore established cause to discipline respondent's license under Business and Professions Code sections 10176, subdivision (i), and 10177, subdivision (j).

7. As set forth in Findings 39 through 42, respondent engaged in dishonest conduct with regard to the May 16, 2011 Residential Purchase Agreement for the Yerba Way property. Complainant therefore established cause to discipline respondent's license under Business and Professions Code section 10177, subdivision (j).

8. As set forth in Finding 33, complainant did not establish that respondent received a deposit check from the buyer on or about May 11, 2011. Consequently, complainant did not establish cause to discipline respondent under Business and Professions Code section 10145, subdivision (c), or 10177, subdivision (d).

9. As set forth in Finding 43, with regard to the Monteverde property, complainant did not establish cause to discipline respondent's license under Business and Professions Code section 10176, subdivision (a) or (d).

10. When all the evidence is considered, restricting respondent's license for five years under the terms and conditions set forth below would adequately protect the public interest, safety and welfare. (Findings 44 through 46.)

11. Business and Professions Code section 10106, which permits the award of costs, in relevant part, provides:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶] ... [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

12. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 10106. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

13. As set forth in Finding 47, complainant requested that respondent be ordered to pay the costs of the investigation and enforcement incurred up to the date of hearing in the total amount of \$11,234.90. Respondent was successful in defending against some of the charges and allegations in the Accusation. She was also successful in obtaining a reduction in the proposed discipline. When all the relevant factors set forth in *Zuckerman* are considered, ordering respondent to pay \$7,500 in costs would be appropriate. Respondent

should be allowed to pay these costs in accordance with a reasonable payment plan approved by the Bureau.

ORDER

All licenses and licensing rights of respondent Allyn Maryvonne Terpstra under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent 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 is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until five (5) years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

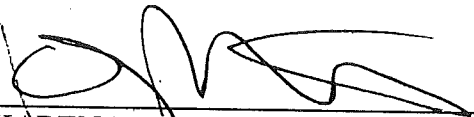
(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent 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 a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall pay to the Bureau costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 10106 in the amount of \$7,500. Respondent may be permitted to pay these costs in a payment plan approved by the Bureau.

DATED: July 3, 2015



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings