

FILED

BEFORE THE

JUL - 8 2015

BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By K. Contreras

* * *

In the Matter of the Accusation of

KELLY LYNN BROWN,
TAMI S. SANER,
KENNETH ANDREW PATTERSON,
KYMM MICHELLE EMBRY, and
DANCE HALL INVESTORS, Inc.,
a Corporation,

Respondents.

NO. H-6145 SAC

(As to KYMM MICHELLE
EMBRY, Only)

DECISION

This Decision as to Respondent KYMM MICHELLE EMBRY only (herein "Respondent"), is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on June 16, 2015. The Findings of Fact set forth herein are based on one or more of the following:
(1) Respondent's express admissions; (2) affidavits; and/or, (3) other evidence.

This Decision revokes a real estate license on grounds of dishonest acts.

The right to reinstatement of a revoked real estate license 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.

FINDINGS OF FACT

1

On June 26, 2014, Tricia Parkhurst made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and form for the Notice of Defense were mailed, by certified and regular mail to Respondent at her last known mailing address on file with the Bureau on June 27, 2014.

On July 10, 2014, Respondent filed a Notice of Defense herein within the time prescribed by Section 11506 of the Government Code. Respondent's Notice of Withdrawal of said Notice of Defense was received on June 15, 2015, and Respondent's default was entered herein.

2

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 (herein the "Code").

3

At all times herein mentioned, KELLY LYNN BROWN (herein "BROWN"), TAMI S. SANER (herein "SANER") and Respondent were and are licensed by the Bureau of Real Estate (herein "Bureau") as real estate salespersons; KENNETH ANDREW PATTERSON (herein "PATTERSON") was and is licensed by the Bureau as a real estate broker.

4

At all times herein mentioned, DANCE HALL INVESTORS INC., (herein "DANCE HALL") was and now is licensed by the Bureau as a corporate real estate broker by and through Wayne Thomas Hall as designated officer-broker of DANCE HALL to qualify said corporation and to act for said corporation as a real estate broker. BROWN, SANER and PATTERSON were and/or are employed by DANCE HALL through Keller Williams, Roseville, CA.

5

Whenever reference is made in an allegation in this Accusation to an act or omission of DANCE HALL, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with DANCE HALL committed such act or omission while engaged in the furtherance of the business or operations of such corporate respondent and while acting within the course and scope of their authority and employment.

6

At all times herein mentioned, Respondents BROWN, SANER, PATTERSON and DANCE HALL 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, 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.

7

On about July 13, 2011, BROWN entered into a Residential Listing Agreement with SANER for BROWN's residence, located on Ravensworth Place in Sacramento, CA, (herein, "the Property"), at a listed price of \$550,000.00.

On about July 16, 2011, BROWN and Tom G. (herein "Tom") Tom entered into a California Residential Purchase Agreement and Joint Escrow Instructions (herein "Purchase Agreement") and Short Sale Addendum, for the listed price of \$550,000.00, when BROWN knew or should have known that the short sale would have been prohibited due to BROWN's relationship to Tom, in violation of Section 10177(j) (fraud or dishonest dealing as a principal) of the Code.

On the same day, about July 16, 2011, DANCE HALL, through SANER and PATTERSON, signed the Purchase Agreement as DANCE HALL dba Keller Williams' Listing and Selling Agents, respectively, when SANER and PATTERSON knew or should have known the transaction was a short sale, that BROWN and Tom were related and that the short sale would have been prohibited.

On about July 18, 2011, two days after the Purchase Agreement was entered into, DANCE HALL, through SANER, put the Property into the Multiple Listing Service (herein "MLS"), and made the following inputs:

- 1) at approximately 12:33 p.m., SANER input the status of the Property as "Active";
- 2) about a minute later, at approximately 12:34 p.m., SANER changed the status of the Property to "Active Short Sale"; and
- 3) about two minutes later, at approximately 12:36 p.m., SANER again changed the status of the Property to "Pending."

SANER changed the status of the Property to "Pending" about three (3) minutes after she had first put the Property into the MLS showing "Active," when in fact the Property was never actually "Active," rather SANER effectively removed the Property from the open market when she changed the status to "Pending," and thereby prevented or discouraged any other good faith bona fide offers from being received or considered.

Short Sale Purchase Contract Addendum:

On about July 22, 2011, a Short Sale Purchase Contract Addendum (herein "Addendum") was signed by both BROWN and Tom, wherein they agreed:

- 1) the property must be sold through an "Arm's Length" Transaction, defined in the Addendum as: "two unrelated parties characterized by a selling price and other terms and conditions that would prevail in a typical real estate sales transaction. No party to the contract is a family member, related by blood or marriage ...";

- 2) neither the sellers nor the seller's agent have any agreements written or oral that will permit the seller or the seller's family member(s) to remain on the property as renters...includes if the seller retains a direct or indirect ownership or possessory interest in the property; and
- 3) none of the parties shall receive any proceeds from the transaction except approved sale commissions.

In fact, BROWN sold the property to Tom, a family member by marriage; Brown remained on the property until August 2012; and Brown received a check in the amount of about \$17,185.00 from proceeds of the sale when BROWN was neither the listing nor the selling agent, all contrary to the terms in the Addendum.

12

BoA Short Sale Approval Letter:

On about October 1, 2011, BROWN and Tom signed the BoA short sale approval letter dated September 28, 2011, wherein they both agreed that the "sellers will not receive any proceeds from this short sale transaction," when in fact, on October 26, 2011, BROWN did receive a check in the amount of about \$17,185.00 from the proceeds of the short sale transaction.

13

Respondent, BROWN's sister, represented herself as the escrow officer and shepherded the transaction through escrow, directing about \$17,185.00 from the proceeds of the short sale to BROWN, when in fact EMBRY knew or should have known that the terms of the short sale prohibited such payment, in violation of Section 10177(j) of the Code.

14

Wells Fargo Short Sale Approval Letter:

On about October 15, 2011, BROWN and Tom signed the Wells Fargo short sale approval letter dated October 14, 2011, which included the Lender's Terms and Conditions for Approval Consideration (herein "Wells Fargo Terms") wherein they both agreed:

- 1) the parties are not to knowingly transact the sale with a relative or to whom they have a close personal relationship, i.e., the sale must be an "arm's length," transaction;
- 2) "seller is to net \$0 (zero) from the sale of the property"; and
- 3) seller was not to remain in the property as a tenant.

In fact, BROWN was related to Tom by marriage; BROWN received about \$17,185.00 in proceeds from the sale; and BROWN remained on the property until about August 2012, approximately 10 months after date the transaction closed, which was on about October 26, 2011, contrary to the Wells Fargo Terms.

15

On about October 19, 2011, DANCE HALL, through SANER and PATTERSON, signed the Wells Fargo Terms, when SANER and PATTERSON knew or should have known that BROWN was related to Tom by marriage, which would have prevented the sale from being an "arm's length" transaction, contrary to the Wells Fargo Terms.

16

The facts alleged as described in Paragraph 13, above, are grounds for the suspension or revocation of the license and license rights of Respondent under Section 10177(j) of the Code.

DETERMINATION OF ISSUES

1

The facts found above constitute cause under Section 10177(j) of the Code for suspension or revocation of Respondent's license and license rights under the Real Estate Law.

2

The standard of proof applied is clear and convincing proof to a reasonable certainty.

ORDER

The real estate license and license rights of Respondent KYMM MICHELLE EMBRY under the provisions of Part I of Division 4 of the Business and Professions Code are hereby revoked.

This Decision shall become effective at 12 o'clock noon on JUL 28 2015.

DATED: Jul 29, 2015

REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner

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2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670

FILED

JUN 16 2015

BUREAU OF REAL ESTATE

By K. Contreras

BEFORE THE
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STATE OF CALIFORNIA

In the Matter of the Accusation of)

11 KELLY LYNN BROWN,)
12 TAMI S. SANER,)
13 KENNETH ANDREW PATTERSON,)
14 KYMM MICHELLE EMBRY, and)
DANCE HALL INVESTORS, Inc. a)
Corporation,)

NO. H-6145 SAC

AS TO KYMM MICHELLE
EMBRY ONLY

Respondents.)

17 Respondent, KYMM MICHELLE EMBRY, having filed a Notice of Withdrawal
18 of her Notice of Defense, is now in default. Pursuant to Section 11520 of the Government Code,
19 it is, therefore, ordered that a default be entered on the record in this matter as to KYMM
20 MICHELLE EMBRY.

21 IT IS SO ORDERED June 15, 2015

23 WAYNE S. BELL
24 Real Estate Commissioner

25 By:

Joe M. Carrillo
26 JOE M. CARRILLO
27 Regional Manager