

FILED

July 9, 2015

BUREAU OF REAL ESTATE

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

By 

In the Matter of the Accusation of	)	
	)	No. H-6216 SAC
MICHAEL J. SEKO and	)	
<u>LAI F. SAECHAO,</u>	)	
	)	As to LAI F. SAECHAO only
Respondents.	)	
_____	)	

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the California¹ Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on June 8, 2015, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondent LAI F. SAECHAO's ("Respondent SAECHAO") express admissions, (2) affidavits, and (3) other evidence.

This Decision only as to Respondent SAECHAO revokes a real estate license and/or license rights pursuant to the Real Estate Law, Part I of Division 4, of the Business and Professions Code ("the Code") Sections 10176(g), 10176(i), 10177(j), and 10177(d) of the Code, in conjunction with Sections 10085, 10137, 10145(c) of the Code, and Sections 2832 and 2970 of Title 10 of the Code of Regulations ("the Regulations").

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 January 29, 2015, Tricia D. 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 Notice of Defense were served to Respondent by regular and certified mail, return receipt requested, to Respondent's last known mailing address on file with the Bureau of Real Estate of the State of California ("the Bureau") on February 6, 2015.

¹ All references herein are to California Codes and Regulations, unless otherwise stated.

Respondent MICHAEL J. SEKO, ("Respondent SEKO"), is presently licensed by the Bureau² of Real Estate ("the Bureau") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker.

At no time has Respondent SEKO registered the fictitious business name "LLC Professional Services" with the Bureau. At all times mentioned herein, the fictitious business name "LLC Professional Services" was a sole proprietorship owned and operated by Respondent SAECHAO, and at no time was "LLC Professional Services" registered with the California Secretary of State as a corporation, limited liability company or any other business entity.

Respondent SAECHAO is presently licensed by the Bureau and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate salesperson. At no time has Respondent SAECHAO been licensed by the Bureau as a real estate broker.

At all times mentioned, Respondent SAECHAO was registered with the Bureau as an employee of Respondent SEKO.

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent SEKO and/or Respondent SAECHAO (collectively "Respondents"), such allegation shall be deemed to mean that Respondents, the employees, agents, real estate licensees, and others employed by or associated with Respondents committed such act or omission while engaged in furtherance of the business or operations of Respondents and while acting within the course and scope of their authority and employment.

At all times mentioned herein, Respondents engaged in activities on behalf of others within the State of California for or in expectation of compensation, for which a real estate license is required under:

Section 10131(a) of the Code, including the operation and conduct of a real estate brokerage that included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or exchange of real property or a business opportunity; and

² Effective July 1, 2013, the Department of Real Estate has become the Bureau of Real Estate pursuant to the Governor's Reorganization Plan of 2012. All actions taken by and references to the Bureau of Real Estate include its predecessor Department of Real Estate.

Section 10131.2 of the Code, including the claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.

8

In the course of the licensed activities described in paragraph 7, above, in or about December 2012, Respondents entered into a listing agreement with homeowner Bryan C. ("Seller"), whereby Seller granted Respondents employment and authorization to sell and offer to sell, solicit prospective purchasers of, and negotiate the purchase and sale of his residential property identified as 47 Naponee Court, Sacramento, California ("the Property").

9

At all times mentioned, the value of the Property was less than the total amount due under the promissory note(s) secured by the encumbrance and Seller was subject to default and loss of the property through foreclosure or through a trustee's sale. On or about August 31, 2012 a Notice of Default and Election to Sell ("Notice of Default") was recorded. On or about December 7, 2012, a Notice of Trustee's Sale was recorded setting the sale date for the Property on December 31, 2012. On or about December 28, 2012, the sale date was cancelled and foreclosure proceeding were put on hold, however the Notice of Default was never rescinded and remained in effect.

10

On or about December 30, 2012, Respondent SAECHAO received an offer from real estate broker Gary Stoll ("Stoll") on behalf of his client Kun H. ("Buyer"), to purchase the Property. On or about January 4, 2013, Respondent SAECHAO submitted a counter-offer to Stoll on behalf of her client, Seller, which contained two addendums. The second addendum, labeled as "No. ssdic/2", ("2nd Addendum"), contained terms and conditions, including, but not limited to the following:

"...10. Buyer(s) acknowledges that there is Professional Third Party Short Sale Servicer and in place of Seller(s) incapacity to pay for the fee if Buyer wishes to purchase the home Buyer hereby agree to pay in the amount of \$2,350.00 to LLC Professional Services. This fee may be in addition to the offer price therefore shall be considered carefully. Disclosure to Buyer: LLC Professional Services and Listing Agent/Broker are Affiliated.

11. If Buyer wishes to proceed with the sale after reviewing all the terms and disclosures within the counter offers and ssdiscs and addendums if any seller credits are approved the credits will first be applied to the third party short sale servicer, any remaining seller credit approved will then be applied to other buyers closing costs.

12. Buyer to deposit Earnest Money deposit upon acceptance by both Buyer(s) and Homeowner(s), if at anytime prior to 60 days from the date the RPA d is accepted between buyer and homeowner the Buyer withdraws their offer the Buyer forfeits EMD. Liquidated damages will be used to pay for Broker Commissions and Negotiating Fees."

11

On or about January 11, 2013, Buyer accepted Seller's counter-offer, including, but not limited to, the 2nd Addendum in its entirety.

12

On or about February 14, 2013, Seller obtained written authorization from the U.S. Department of Housing and Urban Development ("HUD") to participate in the HUD pre-foreclosure sale program ("HUD short-sale authorization"), which stayed foreclosure proceedings on the Property until April 14, 2013. This HUD short-sale authorization was not an approval or acceptance of the purchase agreement entered into between Seller and Buyer, identified above, but was simply an authorization for Seller to participate in HUD's short-sale program which set forth various terms and conditions of a short-sale, including, but not limited to, specified minimum sales price and deadlines for contract submissions.

13

On or about April 3, 2013, Buyer paid funds in the amount of \$2,350.00 to "LLC Professional Services", in compliance with paragraph no. 10 of the 2nd Addendum, on Seller's behalf. Said trust funds were deposited by Respondent SAECHAO on or about April 4, 2013, into the bank account identified below.

14

At all times mentioned, Respondent SAECHAO accepted or received funds in trust ("trust funds") in connection with the licensed activities identified in paragraph 7, above, and deposited, caused to be deposited, or directed that the trust funds be deposited into the following bank account maintained by Respondent SAECHAO, and thereafter, from time-to-time, Respondent SAECHAO made, caused, or directed disbursements of said trust funds, identified as follows:

Bank Name:	US Bank
Account No.:	Last 4 Digits: 9783
Account Name:	"Lai F. Saechao DBA LLC Professional Services"
Signatories:	Respondent SAECHAO

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At no time was the purchase agreement entered into between Seller and Buyer, identified above, or any other subsequent purchase agreement between Seller and Buyer, approved and accepted by Seller's lender, HUD, or any other entity.

On or about August 1, 2013, the Property was sold at a trustee's sale, and the lender transferred ownership of the Property to HUD.

Respondent SAECHAO failed to successfully negotiate the short-sale purchase of the Property for the Buyer and Seller, and thus failed to earn the "Professional Third Party Short Sale Servicer" fees (also referred to in the 2nd Addendum as "Negotiator Fees") paid by Buyer on Seller's behalf to Respondent SAECHAO's company "LLC Professional Services" in the amount of \$2,350.00 pursuant to the terms of the 2nd Addendum.

The "Professional Third Party Short Sale Servicer" fee, also referred to as a "Negotiator Fee" in the 2nd Addendum, that Buyer paid to "LLC Professional Services" was an "advance fee" within the meaning of Sections 10026 and 10146 of the Code, because it was paid before Respondent SAECHAO or her sole proprietorship "LLC Professional Services" completed and successfully negotiated the short-sale purchase of the Property.

Respondent SAECHAO failed to deliver the trust funds identified in paragraphs 13 and 14, above, to her broker, Respondent SEKO, or at her broker's direction into the hands of the broker's principal, into a neutral escrow depository, or into her broker's trust fund account in violation of Section 10145(c) of the Code, and Section 2832 of the Regulations.

Respondent SAECHAO claimed, demanded, charged, received, collected and/or contracted for the advance fees paid by Buyer on Seller's behalf, identified in paragraphs 10 and 13, above, and failed to submit the advance fee agreements and all materials used in obtaining the advance fee agreements to the Bureau prior to use, including, but not limited to, the 2nd Addendum to the Purchase Agreement, without first obtaining a "No Objection Letter" from the Bureau as required by Sections 10085 of the Code, and Section 2970 of the Regulations.

Respondent SAECHAO collected and retained the fees paid by the Buyer to Respondent SAECHAO's unlicensed company "LLC Professional Services" as identified in paragraph 13, above, in violation of Section 10137 of the Code, and failed to disclose the collection of said fees to her employing broker, Respondent SEKO.

DETERMINATION OF ISSUES

1

Cause for the suspension or revocation of all licenses and license rights of Respondent SAECHAO exists with reference to the facts set out in paragraphs 2 through 19, above, pursuant to Section 10177(d) of the Code, in conjunction with Section 10145(c) of the Code and Section 2832 of the Regulations.

2

Cause for the suspension or revocation of all licenses and license rights of Respondent SAECHAO exists with reference to the facts set out in paragraphs 2 through 18 and 20, above, pursuant to Section 10177(d) of the Code, in conjunction with Section 10085 of the Code and Section 2970 of the Regulations.

3

Cause for the suspension or revocation of all licenses and license rights of Respondent SAECHAO exists with reference to the facts set out in paragraphs 2 through 18 and 21, above, pursuant to Sections 10176(g), 10176(i), 10177(j), and 10177(d) of the Code, in conjunction with Section 10137 of the Code.

4

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

ORDER

All licenses and licensing rights of Respondent LAI F. SAECHAO ONLY under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on JUL 30 2015.

DATED: JUNE 16, 2PM

WAYNE S. BELL
REAL ESTATE COMMISSIONER


By: JEFFREY MASON
Chief Deputy Commissioner

FILED

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June 8, 2015

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BUREAU OF REAL ESTATE

By



BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

No. H-2824 FR

MICHAEL J. SEKO and
LAI F. SAECHAO,

DEFAULT ORDER
(As to Lai F. Saechao Only)

Respondents.

Respondent LAI F. SAECHAO, having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, is now in default. It is, therefore, ordered that a default be entered on the record as to Respondent LAI F. SAECHAO **only**.

IT IS SO ORDERED: June 8, 2015

Real Estate Commissioner

By:


JOE CARRILLO
Regional Manager