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FILED

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

NOV 13 2017
BUREAU OF REAL ESTATE
By B. Nicholas

In the Matter of the Accusation of) CalBRE No. H-6393 SAC
DEONTA R DORROUGH,) OAH No. 2017041000
Respondent.)

DECISION

The Proposed Decision dated October 3, 2017, 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.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. 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 Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

DEC 04 2017

This Decision shall become effective at 12 o'clock noon on

IT IS SO ORDERED

11/9/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri

By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

DEONTA R. DORROUGH,

Respondent.

Case No. H-6393 SAC

OAH No. 2017041000

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 18, 2017, in Sacramento, California.

Truly A. Sughrue, Counsel, represented Tricia Parkhurst (complainant), a Supervising Special Investigator, Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.

Deonta R. Dorrough (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on September 18, 2017.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.
2. On November 20, 2013, respondent was issued a real estate broker license. Respondent's license was in full force and effect at all times relevant to this matter and will expire on November 19, 2017, unless renewed or revoked. Complainant seeks to discipline respondent's license based on allegations that he acted negligently and incompetently by advising a client to release her \$15,000 deposit for the purchase of a house in Hayward, California (Hayward property) and that he used an unlicensed name.

2014 Real Estate Transaction

3. Maria Rosela Pastones is a registered nurse. In 2014, she was interested in buying a home. Her palm reader told her about Melissa Medina, who helped people buy houses. Ms. Pastones was introduced to Ms. Medina, who worked for JTS Financial Services and had a business called "Bayanihan of Daly City" (Bayanihan). Ms. Pastones described Bayanihan as a "co-operative." Ms. Pastones was told that if she paid Bayanihan a \$5,000 membership fee, she would be eligible to receive home loans, car loans and other types of "hard-money" loans. In early April 2014, Ms. Pastones paid the \$5,000 membership fee and joined Bayanihan.

4. Some time after Ms. Pastones joined Bayanihan, she attended a "grand opening" at Bayanihan's offices in Daly City. At the grand opening, Ms. Medina introduced Ms. Pastones to respondent. Ms. Pastones described to respondent what she was looking for in a home. She signed a "Disclosure Regarding Real Estate Relationship" (Disclosure) for respondent to act as her agent. In the Disclosure, which was dated April 9, 2014, respondent's real estate broker firm was identified as "The Dorrough Group." Respondent was identified as the real estate salesperson. Respondent's real estate license number was used as the license number for both respondent and The Dorrough Group. Respondent provided Ms. Pastones with access to a website to look for homes for sale. Respondent told Ms. Pastones to let him know when she found one she liked.

5. In early September 2014, Ms. Pastones advised respondent that she was interested in buying the Hayward property. Respondent prepared an offer dated September 4, 2014, for Ms. Pastones to purchase the Hayward property on a California Residential Purchase Agreement and Joint Escrow Instructions form (Purchase Agreement). Pursuant to the Purchase Agreement, Ms. Pastones offered to purchase the Hayward property for \$869,000, consisting of a \$3,000 down payment and a balance of \$866,000 at the close of escrow. The Purchase Agreement identified Ms. Pastones' real estate broker as "The Dorrough Group." Respondent signed the Purchase Agreement on behalf of The Dorrough Group. Respondent's real estate license number was used as the license number for both The Dorrough Group and respondent.

6. Ms. Medina, as the Bayanihan Financing Officer, provided Ms. Pastones with a letter dated September 4, 2014, which, in relevant part, stated:

Congratulations! We are pleased to inform you that you have been approved for our "Bayanihan Homeownership Private Financing Program."

Loan Amount:	\$870,000
Interest Rate:	4%
Contingencies:	None

7. On September 5, 2014, the sellers submitted Counter Offer No. 1 (Counter Offer), which included the following counteroffer terms: (a) the buyer's deposit would be increased from \$3,000 to \$15,000; (b) the parties would share the city transfer taxes equally; and (3) the buyer would remove all contingencies in 12 days. On September 6, 2014, Ms. Pastones accepted the terms of the sellers' Counter Offer. On September 7, 2014, the sellers signed the Purchase Agreement, confirming the agreement to sell the Hayward property to Ms. Pastones in accordance with its terms as amended by the Counter Offer.

8. On September 24, 2014, Ms. Pastones signed Contingency Removal No. 1 (Contingency Removal), by which she agreed to remove all contingencies, except the loan contingency. The Contingency Removal stated that the loan contingency would be removed on September 29, 2014.

9. On October 3, 2014, Ms. Medina sent respondent the following email, which she asked that he forward to the sellers' agent:

We were supposed to close on this property on 10/3/14. Unfortunately we had some issues on our side with a few documents not getting processed in time to close today. I know this is a burden on not only you the seller but it is a heavy burden on the buyer because she was already [*sic*] to move in this week and adjusted her schedule to manage [*sic*] this process. I sympathize with both of your frustrations at this time including the representatives working on your behalf to complete this transaction. I can't change the fact that we will have to extend this period two weeks but I can compensate you for allowing us to extend. I am prepared to offer \$5,000 a week to the transaction which will add \$10,000 to the deal and per agents conversation I will pay the late fees for seller PITI.¹ **Also per selling agent buyer is to release the deposit to seller to show good faith and give seller peace of mind.** The additional fees will come from the lender and will not be added to the loan of the buyer. This is a lender mishap and is no fault of the buyer. The new close date will be 10/17/14. But we reserve the right to close any time before that date. I hope everyone will be satisfied with this addition to the transaction. Like each of you I just want to get this deal done and we are so close to that happening. I want to thank all of you for your understanding and hard work.

(Bolding added.)

¹ "PITI" is an acronym for a mortgage payment that is the sum of monthly principal, interest, taxes and insurance.

10. Respondent forwarded Ms. Medina's October 3, 2014 email to both Ms. Pastones and Bill Ma, the real estate agent for the sellers.

11. On October 3, 2014, Ms. Pastones and the sellers signed an "Extension of Time Addendum" (Extension), which extended the close of escrow until October 17, 2014, and included the following additional term: "Lender/buyer pays seller \$5000 penalty per week & PITI until close of escrow. PITI is \$165.00 per day."

12. On October 4, 2014, Ms. Pastones and the sellers signed "Instructions to Release Funds Prior to Close" (Instructions), which were prepared by the escrow company, dated October 3, 2014, and stated:

We, the undersigned buyer, hand you herewith, or have previously handed you, the sum of \$15,000.00 on the above-referenced escrow, which you are authorized and instructed to release to [the sellers] prior to the close of escrow and immediately upon receipt of these instructions signed by both buyer and seller.

It is fully understood that this escrow has not closed; that no documents have recorded and that this escrow may never close. This instruction for disbursing said monies at this time is of my own free will and with knowledge of the conditions of said escrow, and the title to the property herein referred to.

We, the undersigned seller, hereby accept the above mentioned monies, and hereby acknowledge that said amount represents an advance deposit toward the sales price of the subject property.

It is expressly understood and agreed that the payment of said money is without liability or recourse to Orange Coast Title Company of Northern California. In the event this escrow fails to close, demand and payment of said sum will be handled outside of escrow without further responsibility by Orange Coast Title Company of Northern California.

13. Pursuant to the Instructions, the escrow company released Ms. Pastones' \$15,000 deposit to the sellers. Bayanihan did not fund the loan for Ms. Pastones' purchase of the Hayward property. Consequently, the sale of the Hayward property to Ms. Pastones did not close. The sellers retained Ms. Pastones' \$15,000 deposit.

Testimony of Ms. Pastones, Mr. Ma and Respondent

Testimony of Ms. Pastones

14. At the hearing, Ms. Pastones testified that respondent was not at the initial meeting when she paid Ms. Medina the \$5,000 membership fee and joined Bayanihan. During that initial meeting, Ms. Medina did not tell Ms. Pastones that she was required to use any particular real estate agent when she purchased property with a loan from Bayanihan. But Ms. Pastones asserted that at the grand opening of Bayanihan in April 2014, Ms. Medina told her that if she wanted to participate in the home loan program with Bayanihan, she had to use respondent's services to purchase the property. According to Ms. Pastones, Ms. Medina said this in front of respondent. Ms. Pastones claimed that respondent was "working in partnership" with Bayanihan. But Ms. Pastones admitted that she did not receive any paperwork from Bayanihan which indicated that: (1) respondent and Bayanihan had a partnership; (2) she was required to use respondent as her agent; or (3) respondent was authorized to speak on behalf of Bayanihan.

15. Ms. Pastones worked directly with Ms. Medina to fill out the paperwork to obtain the loan from Bayanihan to purchase the Hayward property. Ms. Pastones worked with respondent regarding her offer. She discussed the Counter Offer with respondent before accepting it. According to Ms. Pastones, she agreed to increase the deposit from \$3,000 to \$15,000 based upon respondent's advice. She made the \$15,000 deposit to the escrow company within a few days after accepting the Counter Offer. At that time, she had no concerns that Bayanihan would not be able to perform.

16. Ms. Pastones agreed to sign the Contingency Removal on September 24, 2014, which provided that the loan contingency would be removed by September 29, 2014, because she believed that Bayanihan would fund the loan and she wanted to show the sellers that she was "really interested" in purchasing the Hayward property. She had no indication at that time that Bayanihan might not be able to fund her loan. She first learned about the problems that Bayanihan was having with funding the loan when she received Ms. Medina's October 3, 2014 email from respondent. She understood from that email that Bayanihan needed two more weeks to close, and that Bayanihan would personally pay \$5,000 each week until escrow closed.

17. Ms. Pastones testified that she spoke to respondent about releasing her deposit prior to the close of escrow to demonstrate to the sellers her commitment to purchase the Hayward property. She initially denied that respondent informed her of the potential risks of releasing her deposit before escrow closed. But upon cross-examination, she admitted that respondent told her that if the sale did not close, she would be releasing her \$15,000 to the sellers. She still believed at the time that the sale would close. After the loan did not close, Ms. Pastones was unable to get in touch with Ms. Medina. Ms. Pastones asserted that respondent was unwilling to help get her \$15,000 deposit back.

Testimony of Mr. Ma

18. Mr. Ma is a licensed real estate broker. He represented the sellers in the real estate transaction at issue in this matter. When he received the Purchase Agreement, he requested that the deposit be increased to \$15,000. According to Mr. Ma, a \$3,000 deposit was too low for the purchase price in this case. The standard deposit in the Bay Area is three percent of the purchase price. In this case, a \$15,000 deposit was only about two percent of the purchase price.

19. Mr. Ma testified that the transaction should have closed on October 5 or 6, 2014, given the date of the Purchase Agreement. On October 3, 2014, he learned there were issues funding the loan when he received Ms. Medina's email from respondent. His sellers had moved to Denmark and were concerned about extending the close of escrow. They pressured him to either close the sale or cancel the Purchase Agreement. He discussed the terms of the Extension with respondent.

20. Mr. Ma testified that he did not "feel comfortable" with the buyer's lender. He did not know the lender. Because the lender was private, it did not have a website he could review. And he was concerned that the lender was making excuses. Mr. Ma emailed to respondent a notice to perform two or three days before the end of the Purchase Agreement. When he received the October 3, 2014 email from the lender, his "first impression" was "good," but upon further reflection, he realized that he had never before seen a lender agree to pay \$5,000 for each week that a sale did not close.

21. Mr. Ma denied that he ever demanded that Ms. Pastones release her \$15,000 deposit. Instead, he demanded that she remove the loan contingency. After he showed Ms. Medina's October 3, 2014 email to his sellers, they were willing to extend the closing two additional weeks, so long as the deposit was released and the other payments promised by Ms. Medina were made. As Mr. Ma explained, if Ms. Pastones had not released the deposit, his sellers would not have extended the Purchase Agreement.

22. The loan did not fund within the two weeks set forth in the Extension. Mr. Ma sent a formal cancelation of the transaction to respondent at the end of October 2014.

23. Mr. Ma was not aware of any business relationship between respondent and Ms. Medina. After he received Ms. Medina's October 3, 2014 email, he spoke to Ms. Medina and confirmed that Ms. Pastones would be releasing her deposit to the sellers. Mr. Ma never heard respondent direct Ms. Pastones to release her deposit to the sellers. Mr. Ma testified that, from a real estate agent's point of view, respondent did all he should have done in his representation of Ms. Pastones as a buyer. As Mr. Ma explained, respondent followed all the procedures expected of a real estate agent representing a buyer, including signing all the necessary documents and conducting the inspection.

Testimony of Respondent

24. Respondent was first licensed as a broker in November 2013. He met Ms. Medina through basketball. Their children played on the same team. Ms. Medina reached out to respondent to work with her clients at a time when respondent was looking for business opportunities. Ms. Medina asked respondent to meet with her clients in Daly City. That is where respondent met Ms. Pastones. Respondent denied that Ms. Medina told her clients that they could only use respondent as their real estate agent.

25. Ms. Pastones told respondent what she was looking for in a property. He put her in MLS and sent her regular emails about available properties.² When Ms. Pastones decided she wanted to purchase the Hayward property, respondent told her to reach out to her lender to obtain a pre-approval letter, which Ms. Medina provided. Respondent submitted the pre-approval letter, together with the Purchase Agreement, to Mr. Ma, and Mr. Ma submitted the Counter Offer. Respondent and Ms. Pastones walked the Hayward property with an inspector and identified issues that needed to be repaired. According to respondent, he did all the "normal stuff" a real estate agent representing a buyer performs.

26. Respondent testified that he does not deal with his buyers' lenders on a daily basis. He expected Ms. Pastones to communicate with her lender directly. He received a bank statement which showed the Bayanihan had \$20 million in its bank account. He had no reason to believe that Bayanihan was not a fit enough lender for Ms. Pastones to do business with.

27. When it came time for the removal of contingencies, additional time was needed for the loan contingency to be removed. Respondent testified that he spoke to Mr. Ma about what the sellers would require to extend the closing date. According to respondent, Mr. Ma told him that his sellers would require Ms. Pastones to release her deposit and they would have to be paid a "bonus" on top of the PITI, so they could pay their mortgage. Respondent testified further that he told Ms. Pastones that if she released her deposit, the sellers would retain it if the sale did not close. He denied that he advised Ms. Pastones to release her deposit.

28. The first time respondent learned that Bayanihan was having a problem funding Ms. Pastones' loan was when he received Ms. Medina's email on October 3, 2014. He had never before seen a lender offer to pay \$5,000 a week until a loan closed, but those were the terms the sellers required to extend the closing date. When he talked to Ms. Pastones about the terms of the Extension, he told her to speak to her lender to get comfortable with releasing her deposit. Given the amount of money Bayanihan had in its bank account as shown on the bank statement he received, he was not concerned that the loan would not be funded.

² "MLS" stands for Multiple Listing Service.

29. Respondent forwarded Ms. Medina's October 3, 2014 email to both Mr. Ma and Ms. Pastones. Mr. Ma confirmed the terms of that email with Ms. Medina. Mr. Ma prepared the Extension. The escrow company prepared the Instructions. Ms. Pastones signed both these documents. When the loan did not fund and the sellers canceled the Purchase Agreement, Ms. Pastones lost her deposit.

30. Respondent testified that after the transaction was canceled and Ms. Pastones was unable to get in contact with Ms. Medina, she called and threatened him. He told her that he had nothing to do with Ms. Medina. Respondent asserted that he did all that he could do in his power to make the transaction work. He received no payment for any of the work he performed. He described himself as the "fall guy" in this matter. He recognized that Ms. Pastones was not "treated right" by Ms. Medina, but he denied that it was his responsibility.

31. Respondent admitted that after Ms. Medina approached him to work with her clients, he rented an office inside Ms. Medina's offices as his branch office. He hoped he would be doing a lot of business there. He did not check Ms. Medina's references. He only received a copy of Bayanihan's bank statement. He understood that Bayanihan was a lender, but did not know that it was a co-operative. He did not check to see how Bayanihan was licensed. He did not know how Ms. Medina got her clients. He did not often go to his branch office in Daly City and never moved anything into that office. Respondent's license certification history indicates that respondent's branch license for that office was issued on September 5, 2014, and canceled on April 1, 2016.

32. Respondent has a bachelor's degree in business from Sonoma State and an MBA from the University of Phoenix. After he received his broker license in 2013, he worked for Keller Williams for approximately eight months to learn the business. He then opened his own firm. The transaction with Ms. Pastones was his first. He admitted that he did not license the name "The Dorrough Group" with the Bureau as required by applicable law. He no longer uses that name. He is currently working full-time as a real estate broker. He does not employ any salespersons.

Discussion

2014 Real Estate Transaction

33. The Accusation alleges that respondent "advised" Ms. Pastones to release her \$15,000 deposit when he had "no reasonable belief" that Bayanihan would be able to perform as promised, and that, as a result of respondent's "negligence and/or incompetence," Ms. Pastones lost her deposit. As set forth below, complainant failed to establish by clear and convincing evidence that respondent acted negligently or incompetently in this matter.

34. Ms. Pastones joined Bayanihan before she met respondent. From the description she gave of Bayanihan's cooperative business model, it appeared that Bayanihan had the earmarks of a Ponzi scheme. There were no allegations in the Accusation that respondent was involved in Bayanihan's lending operations. Ms. Pastones' assertion that

respondent was "in partnership" with Ms. Medina was not supported by competent evidence. Respondent's testimony about how he became involved in the transaction at issue was credible. It appeared that respondent's sole involvement in this matter was as the real estate agent representing Ms. Pastones. There was no evidence that respondent had a business relationship with Ms. Medina or Bayanihan, other than renting space for a branch office in their offices.

35. The allegation that respondent "advised" Ms. Pastones to release her deposit was not supported by the evidence. Ms. Pastones admitted that respondent told her that she would lose her deposit if the transaction did not close. Respondent's testimony that he told Ms. Pastones to contact Ms. Medina to get comfortable with releasing her deposit was credible. The Instructions that Ms. Pastones signed advised her of the risk inherent in releasing her deposit before escrow closed. It was clear from Ms. Pastones testimony that, at the time she signed the Extension and Instructions, she firmly believed that Bayanihan would fund the loan and chose to turn a blind eye to the risk involved in releasing her deposit prior to the close of escrow.

36. Complainant failed to establish that respondent should have known from the information he received from Ms. Medina that Bayanihan would not be able to perform as promised. Respondent's testimony that he did not have reason to believe that Bayanihan had any difficulties funding the loan until he received Ms. Medina's October 3, 2014 email was credible. At the hearing, respondent offered a bank statement which showed that Bayanihan had \$20 million deposited in the Bank of the West in June 2014. Complainant pointed to Ms. Medina's October 3, 2014 email to indicate that Bayanihan was not trustworthy. The essence of complainant's argument was that, because Ms. Medina's October 3, 2014 offer was too good to be true, respondent should have recognized that Bayanihan was not a viable lender. But both respondent and Mr. Ma testified that the sellers would not have extended the closing date without the promises Ms. Medina made in her October 3, 2014 email, one of which was that Ms. Pastones would release her deposit. While in hindsight it was evident that Ms. Medina made false promises about Bayanihan's ability to perform, complainant failed to submit adequate evidence to establish that respondent should have recognized that when he received Ms. Medina's email on October 3, 2014.

37. In order for complainant to prove that respondent was negligent or incompetent in his performance as a real estate agent, complainant had to demonstrate that respondent had a duty to Ms. Pastones that he failed to perform. But at the hearing, complainant could not cite any statute, regulation or case law that imposes upon a real estate agent the duty to conduct due diligence on the viability of a lender a buyer has chosen to fund the purchase of a home. Complainant also failed to provide any expert testimony to establish the standards of practice for real estate brokers with regard to buyers' lenders, or to demonstrate that respondent departed from any standards of practice when he failed to discern that Bayanihan was not legitimate. While it is unfortunate that Ms. Pastones was deceived by an untrustworthy lender, complainant failed to establish that respondent had a duty to protect her from the lender with whom she chose to do business before she met him.

Consequently, complainant failed to establish that respondent acted negligently or incompetently in this matter.

Respondent's Use of an Unlicensed Name

38. Respondent used the name "The Dorrough Group" on both the Disclosure and Purchase Agreement. Respondent admitted that he did not obtain a license from the Bureau before using that name. As set forth in the Legal Conclusions below, respondent's failure to obtain a license to use the name "The Dorrough Group" before using it in the Disclosure and Purchase Agreement constitutes cause to discipline his license.

39. But there was no evidence that, in using the name "The Dorrough Group," respondent knowingly or intentionally engaged in any wrongdoing. There was no indication that he used the name in an effort to deceive any potential clients, the public or the Bureau. He provided his own license number for both "The Dorrough Group" and himself on the Disclosure and Purchase Agreement. When all the evidence is considered, issuing a public reproof against respondent under Business and Professions Code section 495 for this violation is adequate to protect the public interest, safety and welfare.

Costs

40. Complainant has requested that respondent be ordered to pay investigation costs in the amount of \$6,783.25, and enforcement costs in the amount of \$3,181.75, for total costs of \$9,965. In support of these costs, complainant submitted a Certified Statement of Investigation Costs and a Certified Statement of Costs. Attached to these certified statements were printouts that described the general tasks performed, the time spent on each task and the hourly rate for the services in accordance with California Code of Regulations, title 1, section 1042. At the hearing, respondent opposed complainant's requests for costs. Complainant's cost request and respondent's opposition are discussed 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; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) 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, 487.)

2. Pursuant to Business and Professions Code section 10177, subdivision (g), a real estate license may be disciplined if the licensee has "[d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license."

3. As set forth in Findings 33 through 37, complainant failed to establish by clear and convincing evidence that respondent was negligent or incompetent in his representation of Ms. Pastones. Consequently, complainant failed to establish cause to discipline respondent's license under Business and Professions Code section 10177, subdivision (g).
4. Pursuant to Business and Professions Code section 10177, subdivision (d), a real estate license may be disciplined if the licensee has "[w]illfully 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."
5. Business and Professions Code section 10130, in relevant part, provides: "It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department, or to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state without having obtained a license endorsement."
6. Business and Professions Code section 10159.5, subdivision (a)(1), provides: "Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7."
7. California Code of Regulations, title 10, section 2731, subdivision (a), provides: "A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name."
8. Respondent used the name "The Dorrough Group" when he represented Ms. Pastones without first obtaining a license from the Bureau to use that name. (Finding 38.) Respondent's use of that unlicensed name violated Business and Professions Code sections 10130 and 10159.5, and California Code of Regulations, title 10, section 2731. Respondent's violations constitute cause to discipline his license under Business and Professions Code section 10177, subdivision (d).
9. When all the evidence is considered, publicly reproving respondent under Business and Professions Code section 495 for his violation of Business and Professions Code section 10177, subdivision (d), is sufficient to adequately protect the public interest, safety and welfare. (Finding 39.)
10. Business and Professions Code section 10106 permits the award of costs, in relevant part, as follows:

(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.

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

12. As set forth in Finding 40, complainant seeks a total of \$9,965 in investigation and enforcement costs. Respondent objected to these costs at the hearing. Respondent was successful in getting the most serious charge in this matter dismissed. When all the *Zuckerman* factors are considered, ordering respondent to pay \$300 is appropriate given the single charge that was proven in this matter.

ORDER

1. Pursuant to Legal Conclusion 3, the allegations in the Accusation that respondent Deonta R. Dorrough was negligent and/or incompetent in violation of Business and Professions Code section 10177, subdivision (g), are DISMISSED.

2. Pursuant to Legal Conclusions 8 and 9, respondent is hereby publicly reprimanded under Business and Professions Code section 495 for using an unlicensed business name.

3. Pursuant to Business and Professions Code section 10106, respondent shall pay investigation and enforcement costs to the Bureau in the amount of \$300 within 30 days after the effective date of this decision.

DATED: October 3, 2017

DocuSigned by:

Karen Brandt

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KAREN J. BRANDT

Administrative Law Judge

Office of Administrative Hearings