

FILED

JUN 04 2021

DEPARTMENT OF REAL ESTATE
By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:

EDWARD OPOKU LE GRAND SAWYER,
and GIN KAZLA

Respondents.

) DRE No. H-6775 SAC

) OAH No. 2019070560

DECISION

The Proposed Decision dated March 16, 2021, 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.

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code Section 11521, the Department 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 Department'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.

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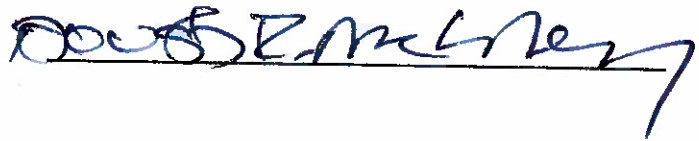
The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JUN 25 2021.

IT IS SO ORDERED

6-3-21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to read "Douglas R. McCauley", is written over a horizontal line.

FILED

APR 16 2021

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

DEPARTMENT OF REAL ESTATE
By J. Laggart

In the Matter of the Accusation Against:

**REAL ESTATE BROKER SERVICES, INC., EDWARD OPOKU LE
GRAND SAWYER, GIN KAZLA, DOUGLAS JAMES FEECE, and
MATHEW PAUL PIRO, Respondents**

Agency Case No. H-6775 SAC

OAH No. 2019070560

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 8, 2021.

Richard K. Uno, Counsel III, represented complainant Chika Sunquist, a Supervising Investigator of the State of California.

Respondent Edward Opoku Le Grand Sawyer (respondent Sawyer) represented himself.

No one appeared for or on behalf of respondent Gin Kazla (respondent Kazla), his default was entered, and this matter proceeded against him as a default proceeding pursuant to Government Code section 11520.¹

Evidence was received and the record left open to allow respondent Sawyer to file with OAH copies of the exhibits he provided complainant during hearing and allow complainant an opportunity to object to the evidence. Respondent Sawyer's evidence is marked as Exhibits A through H, and complainant's objection to the timeliness of the evidence is marked as Exhibit 19. Complainant's objection is overruled, and Exhibits A through H are admitted for all purposes. The record was closed and the matter submitted for written decision on February 24, 2021.

SUMMARY

Complainant seeks to discipline respondent Sawyer's real estate salesperson license based on his violations of the Real Estate Law (Bus. & Prof. Code, § 10000 et seq.) and regulations adopted pursuant to it. She also seeks to discipline respondent Sawyer's mortgage loan originator license endorsement based on the same violations, as well as those committed by respondent Kazla and Mr. Piro. The alleged violations arose out of respondent Sawyer's representation of a property owner during the refinance of one property and the purchase and finance of another. Complainant seeks to discipline respondent Kazla's real estate broker license for failing to exercise

¹ The allegations against respondents Real Estate Broker Services, Inc., Mr. Feece, and Mr. Piro were resolved prior to hearing; none of those respondents appeared at hearing; and this Proposed Decision does not affect the licenses or licensing rights of any of those respondents.

reasonable supervision over respondent Sawyer. Cause exists to discipline respondent Sawyer's and respondent Kazla's respective real estate licenses only. When all the evidence is considered, revoking their licenses is necessary to ensure the public is adequately protected.

FACTUAL FINDINGS

Jurisdictional Matters

RESPONDENT SAWYER'S LICENSE

1. On August 28, 2007, the Department of Real Estate (DRE) issued respondent Sawyer Real Estate Salesperson License Number S01822368, on a conditional basis. He has been affiliated with the following real estate brokers:

- Lucky Cats, Inc., January 15, 2008, through February 28, 2009
- Real Estate Ebroker Inc., January 27, 2010, through November 2, 2011
- Century 21 Select Real Estate Inc., November 3, 2011, through June 3, 2013
- FGG Inc., June 4, 2013, through April 3, 2014
- Real Estate Broker Services, Inc., April 4, 2014 through July 19, 2017

2. Respondent Sawyer's license was suspended indefinitely for failing to meet the continuing education requirements, effective March 1, 2009. The license was reinstated January 27, 2010, upon his compliance with the continuing education requirements.

3. Respondent Sawyer's license was terminated July 20, 2017, when Real Estate Broker License Number B01822368 was issued. The broker license expires July 19, 2021, unless renewed or revoked. There is no history of prior discipline of the broker license. DRE has never issued respondent Sawyer a real estate license containing the fictitious name "The LeGrand Group."

4. On November 6, 2018, DRE issued respondent Sawyer an Individual Mortgage Loan Originator License Endorsement. No evidence of the current status of the endorsement was introduced at hearing.

RESPONDENT KAZLA'S LICENSE

5. On July 30, 2017, DRE issued respondent Kazla Real Estate Salesperson License Number S01746270. The license was terminated July 28, 2008, when Real Estate Broker License B01746270 was issued. The license expires July 27, 2024, unless renewed or revoked. There is no history of prior discipline of the salesperson or broker license. Respondent Kazla was the designated officer on Real Estate Broker Services, Inc.'s, corporate real estate broker license from July 11, 2011, through July 10, 2019.

ACCUSATION

6. On February 4, 2019, complainant signed the Accusation solely in her official capacity. The Accusation alleges that respondent Sawyer made a substantial misrepresentation, engaged in a continued and flagrant course of misrepresentation, willfully disregarded or violated the Real Estate Law or regulations adopted pursuant to it, and demonstrated negligence or incompetence while representing a property owner. The Accusation further alleges that respondent Kazla failed to exercise reasonable supervision over respondent Sawyer.

7. On February 13, 2019, complainant authorized an Amendment to the Accusation. The Amendment alleges respondent Sawyer "held a Mortgage Loan Originator Endorsement" at all relevant times. The Amendment also alleges respondent Sawyer's, respondent Kazla's, and Mr. Piro's alleged misconduct violated Business and Professions Code section 10166.05, subdivision (c), and constitutes cause to discipline respondent Sawyer's endorsement pursuant to Business and Professions Code section 10166.051, subdivision (a).

Respondent Sawyer's Conduct

REFINANCE OF WELLINGTON PROPERTY

8. Ian Greensides owned a home on Wellington Avenue in Concord, California (Wellington Property). He was interested in becoming a real estate investor, and decided to refinance his home and use the excess cash to help purchase his first investment property.

9. Mr. Greensides met respondent Sawyer through "BiggerPockets."² Respondent Sawyer agreed to help Mr. Greensides find a lender willing to refinance the Wellington Property with a loan large enough to allow him to receive cash back.

10. On January 13, 2016, respondent Sawyer received a Letter of Interest stating SVS Finance, Inc., had a proposed investor willing to refinance the Wellington Property. Mr. Greensides accepted the offer of financing, and signed a Wholesale Funding Agreement authorizing SVS Finance, Inc., to secure funds from its investor. The Wholesale Funding Agreement identified respondent Sawyer as the "Originating Broker(s)," and he signed the Agreement doing business as "The LeGrand Group."

² BiggerPockets is an online community centered around real estate investing.

11. The following month, respondent Sawyer entered into a Broker Agreement with SVS Finance, Inc. The Agreement identified respondent Sawyer as "Broker." Under the Agreement, he would submit the names and qualifications of clients looking for loans to refinance or purchase residential property, and SVS Finance, Inc., would consider the information for the possibility of brokering or funding a loan secured by the property being refinanced or purchased. The Agreement specified that SVS Finance, Inc., would use Feece Real Estate Group, Inc., "as its in [sic] house broker" for any loan brokered or funded.

12. Escrow for the refinance of the Wellington Property closed on February 16, 2016,³ and was funded with a \$320,000 loan brokered by SVS Finance, Inc. The terms and conditions of the loan were outlined in the January 13, 2016 Letter of Interest. The loan was secured by a deed of trust for the Wellington Property.

13. The Final Settlement Statement for escrow showed Mr. Greensides paid a \$6,400 loan origination fee to Feece Real Estate Group, Inc. No fee was listed as being paid to respondent Sawyer, The LeGrand Group, or Real Estate Broker Services, Inc. On March 16, 2016, Feece Real Estate Group, Inc., wrote a check in the amount of \$3,200 to Real Estate Broker Services, Inc., for a referral fee for "Real Estate Broker Services." Real Estate Broker Services, Inc., deposited the check and paid the funds to respondent Sawyer.

³ The Accusation alleges that the refinance occurred in 2019. This was a typographical error, as the evidence clearly established it occurred in 2016. Respondent Sawyer waived any objections to the error by not asserting any at hearing.

PURCHASE OF SAN JUAN PROPERTY

14. Mr. Greensides received \$74,250.81 in cash back from refinancing the Wellington Property, and wanted to use some of the funds to purchase an investment property. Respondent Sawyer agreed to represent Mr. Greensides in his search and purchase of an investment property.

15. On March 30, 2016, respondent Sawyer submitted a California Residential Purchase Agreement and Joint Escrow Instructions (Purchase Agreement) for a residential property located on San Juan Avenue in Fair Oaks, California, (San Juan Property) on behalf of Mr. Greensides. The Purchase Agreement identified "Real Estate Broker Services, Inc." as the selling agent. Respondent Sawyer signed the Purchase Agreement on behalf of Real Estate Broker Services, Inc., and included the email address "ed@thelegrandgroup.com."

At hearing, Mr. Greensides explained he did not know the Purchase Agreement was one he supposedly signed for a different property and respondent Sawyer allegedly changed the property information and submitted it to the owners of the San Juan Property without his knowledge. Mr. Greensides first learned of that allegation when he read the Accusation.

16. Mr. Greensides's offer was conditioned on his receiving private financing. The offer was accepted. Mr. Greensides subsequently signed a Real Estate Purchase Addendum, which respondent Sawyer signed as the "Purchaser's Agent." He identified the "Brokerage Firm" as "The LeGrand Group."

17. Respondent Sawyer helped Mr. Greensides find a lender for the San Juan Property. On April 26, 2016, respondent Sawyer received a Letter of Interest stating SVS Finance, Inc., had a proposed investor willing to finance Mr. Greensides's purchase

of the San Juan Property. Mr. Greensides accepted the offer of financing, and signed a Wholesale Funding Agreement authorizing SVS Finance, Inc., to secure funds from its investor. The Wholesale Funding Agreement identified respondent Sawyer as the "Originating Broker(s)," and he signed the Agreement doing business as "The LeGrand Group."

18. During escrow, respondent Sawyer recommended that Mr. Greensides hire a certified appraiser to appraise the San Juan Property. Mr. Greensides elected to have respondent Sawyer prepare an opinion of value instead, and respondent Sawyer obliged. Respondent Sawyer provided his opinion in a "Broker Opinion of Value" dated May 4, 2016, which indicated it was prepared by "The LeGrand Group."

19. Escrow for the purchase of the San Juan Property closed on May 13, 2016, and was funded with a \$257,700 loan brokered by SVS Finance, Inc. The terms and conditions of the loan were as specified in the April 26, 2016 Letter of Interest, except the amount of the loan was larger. The loan was secured by a deed of trust for the San Juan Property.

20. The Final Settlement Statement for escrow indicated Mr. Greensides paid a \$5,000 loan origination fee to SVS Finance, Inc. Although the Final Settlement Statement indicated respondent Sawyer was paid a commission for serving as "Buyer's Broker," no fee was listed as being paid to him, The LeGrand Group, or Real Estate Broker Services, Inc., for the loan. On May 26, 2016, SVS Finance, Inc., wrote a check in the amount of \$2,500 to Real Estate Broker Services, Inc., for a referral fee for the "IAN GREENSIDE [*sic*] LOAN." Real Estate Broker Services, Inc., deposited the check and paid the funds, less fees, to respondent Sawyer.

Shannon Boyd's Testimony

21. Ms. Boyd is employed by DRE as a special investigator. Mr. Greensides filed a complaint with DRE about Real Estate Broker Services, Inc., and respondent Sawyer, and the complaint was assigned to Ms. Boyd for investigation.

22. Ms. Boyd sent correspondence to Real Estate Broker Services, Inc., requesting "copies of the complete transaction file for [the Wellington Property and the San Juan Property] (including, but not limited to, e-mails, communication logs, broker submission, loan application, etc.), along with a timeline of events, so that we may consider all pertinent information regarding the transactions." The letter was addressed to respondent Kazla as Real Estate Broker Services, Inc.'s, designated officer.

23. Respondent Kazla responded to Ms. Boyd's correspondence by explaining "we have no information about these mortgages because Real Estate Broker Services, Inc., do [*sic*] not do loans nor do we permit our agents to conduct loan activity." He included with his response a copy of the Independent Contractor Agreement between Real Estate Broker Services, Inc., and respondent Sawyer. That Agreement defined the scope of respondent Sawyer's real estate activities on behalf of Real Estate Broker Services, Inc., as follows:

[Respondent Sawyer] assumes and agrees to perform no other professional real estate activities other than those regulated by the Bureau of Real Estate and/or those pursuant to [his] association with [Real Estate Broker Services, Inc.]. . . . [Respondent Sawyer] must, and agrees to, obtain written approval from [Real Estate Broker Services, Inc.] to perform any other business activities, other than the

listing and sale of real estate, such as short sale negotiation, co-agency, processing loans, BPO, property management, loans [sic] modification,, [sic] etc., in ad infinitum. . . .

24. Respondent Kazla also explained respondent Sawyer told him that Real Estate Broker Services, Inc., would receive a referral fee for the Wellington Property, and on March 23, 2016, respondent Kazla received a check in the amount of \$3,200 from Feece Real Estate Group, Inc. He disbursed the funds to respondent Sawyer.

25. Additionally, Real Estate Broker Services, Inc., was the selling agent for the purchase of the San Juan Property. Respondent Sawyer told respondent Kazla Real Estate Broker Services, Inc., would receive a referral fee from Feece Real Estate Group, Inc., for the transaction. SVS Finance, Inc., sent a check in the amount of \$2,500 on May 26, 2016. The following week, respondent Kazla sent respondent Sawyer the funds, less applicable fees, as well as his share of the commission for the purchase of the San Juan Property.

Respondent Sawyer's Testimony

26. Respondent Sawyer explained that Mr. Greensides contacted him with the goal of refinancing the Wellington Property and using some of the cash back to purchase investment property. Mr. Greensides initially expressed interest in investment property in the Bay Area, and respondent Sawyer recommended that Mr. Greensides use someone else because he was not a "specialist" in the Bay Area real estate market. When Mr. Greensides agreed to look at property in Sacramento, respondent Sawyer agreed to represent him, and sent him lists of properties to visit.

27. Respondent Sawyer contacted SVS Finance, Inc., to find a lender willing to refinance the Wellington Property. He also represented Mr. Greensides during the

purchase of the San Juan Property and while working with SVS Finance, Inc., to find a lender willing to fund the purchase of the San Juan Property. Respondent Sawyer denied changing the property information on a Purchase Agreement Mr. Greensides signed for one property and submitting it as the offer on the San Juan Property. He said Mr. Greensides "willingly" signed the Purchase Agreement for the San Juan Property.

28. Respondent Sawyer explained he always represented himself to Mr. Greensides as an "agent" and never as a real estate broker. Respondent Sawyer believes there is a difference between an agent and a real estate broker. He also believes a real estate salesperson can be an agent.

29. Respondent Sawyer used the fictitious name "The LeGrand Group" while representing Mr. Greensides. He explained that Real Estate Ebroker Inc., a previous affiliated broker, approved his using the fictitious name.

Analysis

RESPONDENT SAWYER'S CONDUCT

Real Estate Broker

30. A "real estate broker" is a person who, for payment or in anticipation of payment, performs real estate activities on behalf of another. (Bus. & Prof. Code, § 10131.) Real estate activities include obtaining listings of real property for sale, buying or offering to buy real property, and soliciting lenders for a loan secured by a deed of trust for real property. (*Id.*, subds. (a) & (d).) Respondent Sawyer represented himself as being Mr. Greensides's broker for the Wellington Property and the San Juan Property even though he was only a licensed salesperson.

31. Respondent Sawyer solicited SVS Finance, Inc., a loan broker, for a loan to refinance the Wellington Property. SVS Finance, Inc.'s, January 13, 2016 Letter of Interest outlining the terms of a loan was addressed to respondent Sawyer, and he signed the January 22, 2016 Wholesale Funding Agreement as Mr. Greensides's "Broker." Respondent Sawyer received a portion of the loan origination fee Mr. Greensides paid Feece Real Estate Group Inc., SVS Finance, Inc.'s, in-house broker. The loan was secured by a deed of trust for the Wellington Property.

32. Although the Purchase Agreement for the San Juan Property identified Real Estate Broker Services, Inc., as Mr. Greensides's broker, respondent Sawyer signed an April 4, 2016 Real Estate Purchase Addendum as "Purchaser's Agent" and identified "The LeGrand Group" as the "Brokerage Firm." The Final ALTA Settlement Statement for escrow contained the following entry: "Real Estate Commission Buyer's Broker \$8,040.00 to The LeGrand Group." Respondent Sawyer received a portion of that commission.

33. Respondent Sawyer also solicited SVS Finance, Inc., for a loan to finance the San Juan Property. SVS Finance, Inc.'s, April 26, 2016 Letter of Intent outlining the terms of the loan was addressed to him, and he signed the Wholesale Funding Agreement as Mr. Greensides's "Broker." Respondent Sawyer received a portion of the loan origination fee Mr. Greensides paid SVS Finance, Inc. The loan was secured by a deed of trust for the San Juan Property.

34. Respondent Sawyer's testimony that he told Mr. Greensides he was Mr. Greensides's agent, but not his real estate broker, draws a distinction without a difference. A real estate broker is his client's "agent" for performing real estate activities as a matter of law. (Civ. Code, § 2295 ["agency" is a relationship in which one person (the principal) authorizes another (the agent) to act on the principal's behalf];

R.J. Kuhl Corporation v. Sullivan (1993) 13 Cal.App.4th 1589, 1599 [the relationship between a real estate broker and his client is governed by agency and contract law].)

35. A "real estate salesperson," on the other hand, is someone licensed by DRE as such who is "retained by a real estate broker" to perform real estate activities for payment or in anticipation of payment. (Bus. & Prof. Code, § 10016.) A salesperson cannot perform real estate activities on behalf of anyone other than his affiliated broker. (Bus. & Prof. Code, § 10137 [salesperson cannot accept compensation for real estate activities from anyone "other than the broker under whom he . . . is at the time licensed"]; see Bus. & Prof. Code, § 10138 [it is unlawful to pay a person for performing real estate activities if he is not licensed as a real estate broker]; see also Cal. Code Regs., tit. 10, § 2753 ["The license certificate of a real estate salesperson licensee shall be retained at the main business office of the real estate broker to whom the salesperson is licensed"].) Therefore, a salesperson cannot be a client's "agent" for performing real estate activities as a matter of law. (See Civ. Code, § 2330 ["An agent represents his principal for all purposes within the scope of his actual or ostensible authority"]; see also *City of Los Angeles v. Sherwood* (1978) 85 Cal.App.3d 347, 351 [the primary characteristic of an agency relationship is "the authority to act for and in the place of the principal for the purpose of bringing [the principal] into legal relations with third parties"].) Instead, the salesperson is his affiliated broker's agent. (See *People v. Asuncion* (1984) 152 Cal.App.3d 422, 425 [concluding licensed real estate salespersons are not exempt from "loan-sharking" statute as people licensed to make or negotiate loans for others because they cannot perform their licensed duties for, on behalf of, or in place of anyone other than the broker under whom they are licensed].)

Unauthorized Fictitious Name

36. Respondent Sawyer performed real estate activities for Mr. Greensides under the fictitious name "The LeGrand Group." That fictitious name has never been included on his salesperson or broker license.

Undisclosed Fee

37. Feece Real Estate Group Inc. paid respondent Sawyer a referral fee equal to one half the loan origination fee Mr. Greensides paid Feece Real Estate Group Inc. for brokering the loan to refinance the Wellington Property. SVS Finance, Inc., paid respondent Sawyer a referral fee equal to one half the loan origination fee Mr. Greensides paid SVS Finance, Inc., for brokering the loan to purchase the San Juan Property. Neither referral fee was disclosed on the final settlement statement for escrow on the respective loan. (See 12 C.F.R. § 1024.81(b)(1) [the final settlement statement required by The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2601 et seq.) "must separately itemize each third-party charge paid by the borrower and seller"].)

RESPONDENT KAZLA'S CONDUCT

38. Respondent Kazla was Real Estate Broker Services, Inc.'s, designated officer while respondent Sawyer acted as Mr. Greensides's agent for the refinance of the Wellington Property and the purchase and finance of the San Juan Property. Respondent Kazla failed to exercise reasonable supervision over respondent Sawyer's conduct as evidenced by the latter's numerous violations of the Real Estate Law and regulations adopted pursuant to it.

39. Although respondent Kazla told Ms. Boyd Real Estate Broker Services, Inc., "do [*sic*] not do loans nor do we permit our agents to conduct loan activity," respondent Sawyer's Independent Contractor Agreement established otherwise. Additionally, the words "IAN GREENSIDE [*sic*] LOAN" were written on the memo line of the check SVS Finance, Inc., sent Real Estate Broker Services, Inc., for the San Juan Property. And though none of the paperwork for the Wellington Property identified Real Estate Broker Services, Inc., as Mr. Greensides's broker for the refinance, respondent Kazla was expecting a fee for the transaction. When he received Feece Real Estate Group, Inc.'s check, his duty to supervise respondent Sawyer required respondent Kazla to inquire more about the referral fee to ensure respondent Sawyer had not engaged in improper conduct. There was no evidence respondent Kazla made any such inquiry.

UNPROVEN ALLEGATIONS

Opinion of Value

40. It was undisputed that respondent Sawyer prepared the May 4, 2016 "Broker Opinion of Value" for the San Juan Property. It was also undisputed that he was not a licensed broker at the time. But complainant failed to cite any legal authority precluding a salesperson from preparing an opinion of value. Business and Professions Code section 10177.3, subdivision (a), prohibits a licensee from "knowingly or intentionally misrepresent[ing] the value of real property." A "licensee" is "a person, whether broker or salesperson, licensed" by DRE. (Bus. & Prof. Code, § 10011.) Business and Professions Code section 11302, subdivision (b), exempts "an opinion given by a real estate licensee . . . in the ordinary course of his or her business in connection with

a function for which a license is required under . . . Chapter 3 (commencing with Section 10130) . . ." from the definition of "appraisal."⁴

Prior Purchase Agreement

41. Complainant failed to introduce any admissible evidence that respondent Sawyer "used a purchase agreement previously signed by [Mr. Greensides] for a different property and filled in the information for the San Juan Property." Respondent Sawyer stated Mr. Greensides "willingly" signed the Purchase Agreement for the San Juan Property. Mr. Greensides testified he first learned of that allegation when he read it in the Accusation. Although Ms. Boyd affirmatively testified that respondent Sawyer misused Mr. Greensides's signature, she did not provide any foundation for her testimony. Therefore, her testimony was not persuasive. (See *People v. Valencia* (2006) 146 Cal.App.4th 92, 103 [lay witness testimony must be based on personal knowledge].)

Dual Representation

42. Feece Real Estate Group, Inc., was SVS Finance, Inc.'s, in-house broker for the Wellington Property and San Juan Property loans, and respondent Sawyer represented Mr. Greensides only for those transactions. But even if respondent Sawyer also represented SVS Finance, Inc., he had no duty "to disclose to all parties that he acted as an agent for the buyer as well as the loan originator" under California Code of Regulations, title 10, section 2904. That regulation requires a real estate licensee to

⁴ Nonetheless, respondent Sawyer's choice to entitle the document "Broker Opinion of Value" was further evidence that he misrepresented his licensed status to Mr. Greensides.

disclose the amount and source of his compensation when he represents both the buyer and the loan originator for the loan financing the purchase or the buyer's lender, not the nature of his relationships with the buyer and the loan originator or lender.

43. Nor did respondent Sawyer owe a duty of disclosure pursuant to California Code of Regulations, title 10, section 2903. That regulation requires written disclosure by "the real estate broker who employs the salesperson" who represents both the buyer of property and the loan originator or lender.

44. Lastly, Business and Professions Code section 10177.6 did not apply to respondent Sawyer. That statute requires written disclosure whenever "an agent undertakes to arrange financing in connection with a sale . . . of real property" The statute adopts the definition of "agent" provided in Civil Code section 2079.13. Civil Code section 2079.13, subdivision (a), defines "agent" in the context of "a real property transaction" as a real estate broker.

Request for Costs of Investigation and Enforcement

45. Complainant requested costs pursuant to Business and Professions Code section 10106 in the total amount of \$12,615.22. That amount consists of investigation costs in the amount of \$7,684.62 and enforcement costs in the amount of \$4,930.60. At hearing, complainant introduced a Certified Statement of Investigation Costs certifying under penalty of perjury that DRE incurred costs in the amount of \$7,684.62 for the time she (\$120) and Ms. Boyd (\$7,564.62) spent investigating this matter. A spreadsheet itemizing the time spent by staff member, date, task, time, hourly rate, and total amount is attached to the Certified Statement of Investment Costs. Complainant also introduced a Certified Statement of Costs certifying under penalty of

perjury that DRE incurred costs in the amount of \$4,930.60 for the time Mr. Uno spent on this matter prior to hearing. A spreadsheet itemizing his time by date, task, time, hourly rate, and total amount is attached to the Certified Statement of Costs.

46. Complainant's costs of investigation should be reduced to account for the claims of misconduct investigated that did not result in a finding of cause for discipline as discussed in Legal Conclusion 31. There was no evidence, however, that the amount of time Mr. Uno spent on this matter was materially affected by the number of claims of misconduct DRE investigated and that ultimately supported cause for discipline, and the entire amount of costs of enforcement incurred was reasonable.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant has the burden of proving each ground for discipline alleged in the Accusation, and must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 552, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"]; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212 [the standard of proof applicable to proceedings for the discipline of a real estate license is clear and convincing evidence to a reasonable certainty].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for

probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

Applicable Law

2. "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" (Bus. & Prof. Code, § 10130.)

3. "A broker shall exercise reasonable supervision over the activities of his or her salespersons." (Cal. Code Regs., tit. 10, § 2725.) When the broker is a corporation, the duty to supervise falls upon the officer designated on the corporate broker license. (Bus. & Prof. Code, § 10159.2, subd. (a).)

4. A real estate salesperson who wishes to perform real estate activities under a fictitious name "shall file with his . . . application a certified copy of his . . . fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7." (Bus. & Prof. Code, § 10159.5, subd. (a)(1).) "A licensee shall not use a fictitious name . . . unless the licensee is the holder of a license bearing the fictitious name." (Cal. Code Regs., tit. 10, § 2731, subd. (a).)

5. A real estate licensee "who is acting as an agent in connection with a sale . . . of real property undertakes to arrange financing with respect to the transaction . . . shall . . . make a written disclosure of those roles to all parties to the sale" (Cal. Code Regs., tit. 10, § 2903.) When the licensee is a real estate salesperson, "the written disclosure must be made by the real estate broker who employs the salesperson." (*Ibid.*)

6. A real estate licensee who acts as an agent for the seller or buyer of real property and "receives compensation . . . from a lender in connection with the securing of financing for the transaction" commits a misrepresentation if he fails "to disclose to both parties, prior to the closing of the transaction, the form, amount and source of compensation received" (Cal. Code Regs., tit. 10, § 2904.) In addition to disclosing his compensation, the licensee must also disclose his dual status as an agent for one of the parties and an arranger of financing "to all parties to the sale . . . and any related loan transaction." (Bus. & Prof. Code, § 10177.6.) "For purposes of this section, "agent" has the same meaning as defined in subdivision (a) of Section 2079.13 of the Civil Code." (Bus. & Prof. Code, § 10177.6.) Civil Code section 2079.13, subdivision (a), defines "agent" in the context of a "real property transaction" as a "real estate broker."

Cause for Discipline

RESPONDENT SAWYER'S REAL ESTATE SALESPERSON LICENSE

Using a Fictitious Name

7. A real estate license may be disciplined if the licensee makes "any substantial misrepresentation." (Bus. & Prof. Code, § 10176, subd. (a).) Respondent Sawyer used the fictitious name "The Legrand Group" throughout his representation of Mr. Greensides. By doing so, he implied that his use of the fictitious name was authorized by DRE as required by Business and Professions Code section 10159.5, subdivision (a)(1), and California Code of Regulations, title 10, section 2731, subdivision (a). But it never was. Therefore, cause exists to discipline respondent Sawyer's real estate license pursuant to Business and Professions Code section 10176, subdivision (a).

8. A real estate license may also be disciplined if the licensee engages in "a continued and flagrant course of misrepresentation" (Bus. & Prof. Code, § 10176, subd. (c).) Respondent Sawyer engaged in "a continued and flagrant course of misrepresentation" for the reason explained in Legal Conclusion 7. Therefore, cause exists to discipline his real estate license pursuant to Business and Professions Code section 10176, subdivision (c).

9. A real estate license may also be disciplined if the licensee has "willfully disregarded or violated the Real Estate Law" or regulations adopted pursuant to it. (Bus. & Prof. Code, § 10177, subd. (d).) Respondent Sawyer "willfully disregarded or violated the Real Estate Law" or regulations adopted pursuant to it for the reason explained in Legal Conclusion 7. Therefore, cause exists to discipline his real estate license pursuant to Business and Professions Code section 10177, subdivision (d).

10. A real estate license may also be disciplined if the licensee has "demonstrated negligence or incompetence in performing an act" requiring a real estate license. (Bus. & Prof. Code, § 10177, subd. (g).) Respondent Sawyer "demonstrated negligence or incompetence" for the reason explained in Legal Conclusion 7. Therefore, cause exists to discipline his license pursuant to Business and Professions Code section 10177, subdivision (g).

Misrepresenting Licensed Status

11. Respondent Sawyer repeatedly misrepresented himself as a real estate broker while representing Mr. Greensides. Therefore, cause exists to discipline respondent Sawyer's real estate license pursuant to Business and Professions Code section 10176, subdivision (a).

12. Respondent Sawyer engaged in "a continued and flagrant course of misrepresentation" for the reason explained in Legal Conclusion 11. Therefore, cause exists to discipline his real estate license pursuant to Business and Professions Code section 10176, subdivision (c).

13. Respondent Sawyer "willfully disregarded or violated" Business and Professions Code sections 10130 and 10131, subdivisions (a) and (d), for the reason explained in Legal Conclusion 11. Therefore, cause exists to discipline his real estate license pursuant to Business and Professions Code section 10177, subdivision (d).

14. Respondent Sawyer "demonstrated negligence or incompetence" for the reason explained in Legal Conclusion 11. Therefore, cause exists to discipline his real estate license pursuant to Business and Professions Code section 10177, subdivision (g).

Receiving an Undisclosed Fee

15. Business and Professions Code section 10176, subdivision (g), prohibits a real estate licensee from receiving an undisclosed fee. Respondent Sawyer received an undisclosed referral fee for the refinance of the Wellington Property and the purchase of the San Juan Property. Therefore, cause exists to discipline his real estate license pursuant to Business and Professions Code section 10176, subdivision (a).

16. Respondent Sawyer's receipt of only two undisclosed referral fees did not constitute "a continued and flagrant course of misrepresentation." Therefore, no cause exists to discipline his real estate license pursuant to Business and Professions Code section 10176, subdivision (c), based on that allegation.

17. Respondent Sawyer "willfully disregarded or violated" Business and Professions Code section 10176, subdivision (g), for the reason explained in Legal Conclusion 15. Therefore, cause exists to discipline his real estate license pursuant to Business and Professions Code section 10177, subdivision (d).

18. Respondent Sawyer "demonstrated negligence or incompetence" for the reason explained in Legal Conclusion 15. Therefore, cause exists to discipline his real estate license pursuant to Business and Professions Code section 10177, subdivision (g).

Completing Opinion of Value

19. Complainant did not cite any statutory or regulatory prohibition against a licensed real estate salesperson preparing an opinion of value. Therefore, no cause exists to discipline respondent Sawyer's real estate license pursuant to Business and Professions Code sections 10176, subdivisions (a) or (c), or 10177, subdivisions (d) or (g), based on his preparation of the Broker Opinion of Value.

Using Prior Purchase Agreement

20. Complainant failed to establish by clear and convincing evidence that respondent Sawyer "used a purchase agreement previously signed by [Mr. Greensides] for a different property and filled in information for the San Juan Property." Therefore, no cause exists to discipline his real estate license pursuant to Business and Professions Code sections 10176, subdivisions (a) or (c), or 10177, subdivisions (d) or (g), based on that allegation.

Failing to Disclose Dual Representation

21. Respondent Sawyer did not represent both Mr. Greensides and SVS Finance, Inc., for the refinance of the Wellington Property or the finance of the San Juan Property. Therefore, no cause exists to discipline his real estate license pursuant to Business and Professions Code sections 10176, subdivisions (a) or (c), or 10177, subdivisions (d) or (g), as those statutes relate to Business and Professions Code section 10177.6 or California Code of Regulations, tit. 10, sections 2903 or 2904, based on his nondisclosure of the alleged dual representation.

RESPONDENT SAWYER'S MORTGAGE LOAN ORIGINATOR LICENSE ENDORSEMENT

22. A mortgage loan originator license endorsement may be disciplined "for a violation of this article, or any rules or regulations adopted hereunder." (Bus. & Prof. Code, § 10166.051, subd. (a).) Complainant alleged cause to discipline respondent Sawyer's mortgage loan originator license endorsement based on his, respondent Kazla's, and Mr. Piro's purported violations of Business and Professions Code section 10166.05, subdivision (c). But that statute pertains to the denial of an application for a mortgage loan originator license endorsement. Therefore, no cause exists to discipline respondent Sawyer's mortgage loan originator license endorsement pursuant to Business and Professions Code section 10166.051, subdivision (a), as that statute relates to Business and Professions Code section 10166.05, subdivision (c).⁵

⁵ Complainant did not allege cause for discipline pursuant to Business and Professions Code section 10166.051, subdivision (b), which authorizes discipline for failing to meet any of the requirements specified in Business and Professions Code

RESPONDENT KAZLA'S REAL ESTATE BROKER LICENSE

23. Respondent Kazla "willfully disregarded or violated" Business and Professions Code section 10159.2, subdivision (a), and California Code of Regulations, title 10, section 2725, by failing to exercise reasonable supervision over respondent Sawyer's representation of Mr. Greensides. Therefore, cause exists to discipline respondent Kazla's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (d).

24. A real estate broker license may be disciplined if the broker "as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required." (Bus. & Prof. Code, § 10177, subd. (h).) Respondent Sawyer was authorized to perform real estate activities only as Real Estate Broker Services, Inc.'s, agent as a matter of law. Therefore, cause exists to discipline respondent Kazla's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (h), for the reasons explained in Legal Conclusion 23.

Conclusion

RESPONDENT SAWYER'S LICENSE AND LICENSING RIGHTS

25. Cause exists to discipline respondent Sawyer's real estate license for the reasons explained in Legal Conclusions 7 through 15 and 17 through 18, individually

section 10166.05, and no discipline can be imposed for violating statute. (See *Wheeler v. State Board of Forestry* (1983) 144 Cal.App.3d 522, 526-527 [the order of discipline must be based on the allegations in the accusation].)

and collectively. Honesty and integrity are character traits essential for all real estate licensees. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) Respondent Sawyer's repeated misrepresentations that he was a real estate broker and continued use of the fictitious name "The LeGrand Group" without authorization from DRE raised serious concerns about his honesty and integrity. Additionally, his lack of understanding that a real estate salesperson cannot perform real estate activities on behalf of the client demonstrated a fundamental misunderstanding of the Real Estate Law and regulations adopted pursuant to it. Therefore, his real estate license and licensing rights must be revoked.

26. No cause exists to discipline respondent Sawyer's mortgage loan originator license endorsement for the reasons explained in Legal Conclusion 22. As a practical matter, however, he is precluded from engaging in business as a mortgage loan originator under Article 2.1 of the Business and Professions Code until he obtains and maintains "a real estate license pursuant to Article 2 (commencing with Section 10150)" of the Business and Professions Code. (Bus. & Prof. Code, § 10166.02, subd. (b)(1).)

RESPONDENT KAZLA'S LICENSE AND LICENSING RIGHTS

27. Cause exists to discipline respondent Kazla's real estate broker license for the reasons explained in Legal Conclusions 23 and 24, individually and collectively. A salesperson cannot perform his licensed duties on behalf of anyone other than his affiliated broker, and the law imposes a duty to supervise the salesperson on the affiliated broker. The public relies on the broker to perform its duty so they (the public) are protected from a negligent, incompetent, or unscrupulous salesperson. Respondent Kazla's unwillingness or inability to perform this essential duty showed a

lack of honesty and integrity. Therefore, his real estate broker license and licensing rights should be revoked.

Award of Costs

28. An order resolving a disciplinary proceeding in DRE's favor may require a real estate licensee to pay DRE's reasonable costs of investigating and enforcing the matter. (Bus. & Prof. Code, § 10106, subd. (a).)

A certified copy of the actual costs . . . 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.

(*Id.*, subd. (c).)

29. DRE may prove its reasonable costs of investigation and enforcement by submitting "Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." (Cal. Code Regs., tit. 1, § 1042, subd. (b).) When costs are sought for services provided by a DRE employee, the declaration "may be executed by the [DRE] or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached." (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1).)

30. 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 costs sought pursuant to statutory provisions like Business and Professions Code section 10106. Those factors include: 1) the licensee's success in getting the charges dismissed or reduced; 2) the licensee's subjective good faith belief in the merits of his position; 3) whether the licensee raised a colorable challenge to the proposed discipline; 4) the licensee's financial ability to pay, and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

31. Complainant failed to prove the allegations that respondent Sawyer: (1) was SVS Finance, Inc.'s, agent for the refinance of the Wellington Property and the finance of the San Juan Property, and (2) used a prior Purchase Agreement to buy the San Juan Property. And though complainant did not establish that it was improper for respondent Sawyer to prepare an opinion of value for the San Juan Property, his labeling his opinion a "Broker Opinion of Value" was evidence that he misrepresented his licensed status to Mr. Greensides. After considering the *Zuckerman* factors, reducing complainant's costs of investigation by \$1,500 to account for time spent investigating allegations of misconduct that did not result in discipline is appropriate and reasonable. There was no evidence that the number of claims of misconduct investigated and that ultimately supported cause for discipline significantly affected the amount of time spent prosecuting this matter, and no reduction in complainant's costs of enforcement is necessary.⁶ Consequently, respondent Sawyer and respondent

⁶ Complainant sought to discipline respondent Sawyer's mortgage loan originator license endorsement based on the same allegations of misconduct for which she sought to discipline his real estate license. The appropriate reduction to complainant's costs of investigation based on the claims of misconduct that did not

Kazla are jointly and severally liable for paying complainant's costs in the total sum of \$11,115.22 as set forth in the Order below.

ORDER

1. All licenses and licensing rights of respondent Edward Opoku Le Grand Sawyer are REVOKED by reason of Legal Conclusion 25.
2. The Individual Mortgage Loan Originator License Endorsement issued to respondent Edward Opoku Le Grand Sawyer is REVOKED by reason of Legal Conclusion 26.
3. All licenses and licensing rights of respondent Gin Kazla are REVOKED by reason of Legal Conclusion 27.

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support cause for discipline were made, and no further reduction based on the absence of cause to discipline the endorsement is appropriate.

4. Respondents Edward Opoku Le Grand Sawyer and Gin Kazla shall, individually and collectively, reimburse the Department of Real Estate the sum of \$11,115.22 for costs incurred while investigating and enforcing this matter. These costs may be paid pursuant to a payment plan approved by DRE or its designee.

DATE: March 16, 2021


Coren D. Wong (Mar 16, 2021 11:25 PDT)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings