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FILED
OCT 06 1995

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-6932 SF
)	
CHUNG SHUNG LO)	OAH No. N 9308088
and ABLE-TAO FINANCIAL, INC.,)	
)	
Respondents.)	

ORDER STAYING EFFECTIVE DATE

On September 13, 1995, a Decision was rendered in the above-entitled matter to become effective October 11, 1995.

IT IS HEREBY ORDERED that the effective date of the Decision of September 13, 1995, is stayed for a period of Twenty-Nine (29) days.

The Decision of September 13, 1995, shall become effective at 12 o'clock noon on November 9, 1995.

DATED: October 6, 1995

JIM ANTT, JR.
Real Estate Commissioner

Norman G. Catalano
By: NORMAN G. CATALANO
Deputy Real Estate Commissioner

At all times mentioned herein, Lo was licensed as an individual real estate broker as well as the designated broker officer of ATF. Her individual broker license will expire on November 23, 1998.

At all times mentioned herein, ATF was licensed as a real estate broker corporation acting by and through Lo as its designated broker officer. ATF's license was canceled on June 21, 1993.

IV

Effective November 24, 1990, a renewed real estate broker license was issued by the Department to Lo authorizing her to transact business for which a real estate license is required at 1741 Taraval Street, San Francisco.

Effective September 27, 1989, a real estate broker corporation license was issued by the Department to ATF authorizing it to transact business for which a real estate license is required at 1741 Taraval Street, San Francisco.

V

During November 1991, Lo and ATF vacated the premises located at 1741 Taraval Street, San Francisco, but failed to notify the Department thereof or to maintain on file a new address for the principal place of business for the real estate brokerage activities of each broker. Not until about February 24, 1993 did Lo notify the Department of a new principal place of business for ATF (1932 Irving Street #118, San Francisco). With respect to her individual real estate broker license, Lo notified the Department of a new principal place of business (4402 Fulton Street, San Francisco) on or about March 21, 1994.

VI

Beginning in or about mid-September 1992 and continuing through the date of the hearing, Lo and ATF failed to retain and make available for examination and inspection by Department representatives all documents executed or obtained by them in connection with their real estate transactions, including but not limited to trust fund records, bank statements, canceled checks and loan files.

Department auditor John Monroe first contacted Lo on August 27, 1992 to arrange to examine ATF trust account records, bank statements, canceled checks, etc., for the period since April 30, 1991. Although Lo made an appointment to meet with Monroe on September 16, 1992 at the office of accountant Steve Ho, she later canceled that appointment and rescheduled it. Before the new date, Monroe requested from Lo additional ATF records pertaining to specific loan files. Written

requests for the records and files were also sent to Lo by Monroe's supervisor Norma Reilly. There followed numerous communications and attempted communications between Monroe and Lo and Lo's attorney Jerrold LaDar about the Department's request for ATF records, the net result of which was that no records were provided to the Department. LaDar advised Monroe that Steve Ho did not have any of the records sought, and suggested that the records might be in the possession of the FBI, whose agents on October 24, 1991 had seized records and files from the 1741 Taraval Street location pursuant to a search warrant.

On October 22, 1992, Norma Reilly and Deputy Real Estate Commissioner Barbara McFadden inspected the nine boxes of seized records being held by the FBI. Some of the specific ATF loan files sought by the Department were located, but the FBI did not have the trust account records and related documents which the Department needed to conduct an audit.

On or about December 10, 1992, Lo provided to the Department many, but not all, of the ATF trust account records and related documents requested by Department representatives. Lo provided a control record of trust funds received and disbursed reflecting transactions from March through December 1991, but did not provide bank statements and canceled checks for the period after August 30, 1991. Seven specific loan files were not provided to the Department.

VII

Lo and ATF received trust funds from the public for credit report fees and appraisal fees in connection with their mortgage loan brokerage business. Some or all of these trust funds were deposited into a bank account (No. 4001962) in the name of Able-Tao Financial, Inc. at First Commercial Bank, 1000 Taraval Street, San Francisco. This account, which was opened by Lo as vice-president of ATF and on which she was the only person authorized to make withdrawals, was not designated as a trust account.

VIII

Because the records provided by Lo to the Department were not complete, Monroe was not able to perform a complete audit of the business. Based upon the separate beneficiary statements which were provided, however, Monroe calculated the trust fund accountability for ATF's account at First Commercial Bank at approximately \$1,749.50¹ as of December 31, 1991. With the bank account balance of \$1,211.10, there was a shortage of

¹ Monroe designates this amount as an approximation, because of the unavailability of records required for a full audit and verification.

approximately \$538.40. \$88.40 of the shortage was due to bank charges, which are the responsibility of the broker. The rest, \$450.00,² was due to negative balances for some of the beneficiaries (i.e., ATF paid out more funds on behalf of the beneficiary than it had collected from that person). There is no evidence that Lo personally benefitted from the money which should have been in the account.

IX

In connection with the collection and disbursement of trust funds by respondents Lo and ATF, the following deficiencies existed:

1. Respondents failed to deposit the funds into a trust fund account in the name of the broker as trustee at a bank or other financial institution.
2. Respondents' columnar record of trust funds received and disbursed (control record) did not contain for all entries the date funds received, the date of disbursements and a daily account balance.
3. Respondents failed to reconcile the balance of all separate beneficiary or transaction records with the record of all trust funds received and disbursed on a monthly basis.

X

Lo became involved with ATF after meeting Ming De Tao in Hong Kong. Tao, the president and sole stockholder of ATF, asked Lo to be the real estate broker for the corporation. Lo oversaw ATF's mortgage loan brokerage business, supervising four or five agents. Without accounting knowledge or experience, she relied on others to maintain her trust account records. During the time period at issue herein, Lo's ex-husband Siu Chu was doing the bookkeeping for ATF. It can not be determined where the trust account records were kept, although they apparently were not at the 1741 Taraval Street location on October 24, 1991 when the FBI executed the search warrant.

² This amount would be \$104.50 less, if, as Lo now asserts, the separate beneficiaries listed as Cary Kwan and Gary Kwan are actually the same person.

XI

After Lo closed the business in November 1991, she went to Hong Kong to pursue a business opportunity in China (she did not return to San Francisco for over two months). Lo saw Ming De Tao in Hong Kong at that time. She now explains her failure to notify the Department of a change of address for ATF by claiming that she told Tao to make this notification and that he agreed to do so. Despite a supporting letter from Ming De Tao, Lo's claim is not credible, and in any event would not explain her failure to notify the Department that 1741 Taraval Street was no longer the principal place of business for her individual broker license.

XII

Lo makes much of the fact that on November 14, 1991, a few days after she left for Hong Kong, Siu Chu's residence was ransacked in a robbery, and many of his records were strewn around the premises. Although ATF records were being stored at Siu Chu's home, it was not established that the records later sought by the Department were at this location at the time of the robbery, or that the robbery had anything to do with Lo's failure to make the records available for the Department's inspection.

XIII

From November 1991 to February 1993, Lo was not engaged in any real estate activities. She maintains that she never tried to keep her records from the Department, but that they were not in her possession when the Department requested that she produce them, and Chu had moved to Los Angeles. Because of the pending criminal matter, attorney LaDar apparently advised Lo not to talk to the Department. At some point, Lo asked Chu for assistance in responding to the Department's request, and he was able to locate the trust account records which Lo provided to the Department in December 1992.

XIV

Lo is now 47 years old, and spends most of her time doing unpaid political work. She does some business consulting (she has experience in importing and exporting), and she also acts as a mortgage broker/consultant, helping people obtain loans. Lo's 18 year old son and 12 year old daughter live with her. Her parents help her out with money.

Lo has been licensed as a real estate broker for over seven years. Her license is important to her, because she has made money in the past as a broker, and because of her professional pride in having the license.

DETERMINATION OF ISSUES

I

Finding V: Cause for license discipline of Lo and ATF was established pursuant to Business and Professions Code section 10165 by reason of a violation of Business and Professions Code section 10162. Cause for license discipline of Lo and ATF was also established pursuant to Business and Professions Code section 10177(d) by reason of a willful³ violation of Business and Professions Code section 10162 and section 2715 of Title 10 of the California Code of Regulations.

II

Finding VI: Cause for license discipline of Lo and ATF was established pursuant to Business and Professions Code section 10177(d) by reason of a willful violation of Business and Professions Code section 10148(a).

III

Finding VIII: Cause for license discipline of Lo and ATF was established pursuant to Business and Professions Code section 10177(d) by reason of a willful violation of Business and Professions Code section 10145.

IV

Finding IX-1: Cause for license discipline of Lo and ATF was established pursuant to Business and Professions Code section 10177(d) by reason of a willful violation of Business and Professions Code section 10145 and section 2830 of Title 10 of the California Code of Regulations.

V

Finding IX-2: Cause for license discipline of Lo and ATF was established pursuant to Business and Professions Code section 10177(d) by reason of a willful violation of section 2831 of Title 10 of the California Code of Regulations.

³ Within the meaning of Business and Professions Code section 10177(d), authorizing discipline of a licensee who has "[w]illfully disregarded or violated" statutes or regulations governing the activities of real estate licensees, "willful" means deliberate or voluntary, not accidental or without purpose. Apollo Estates, Inc. v. Department of Real Estate (1985) 174 Cal. App. 3d 625, 639.

VI

Finding IX-3: Cause for license discipline of Lo and ATF was established pursuant to Business and Professions Code section 10177(d) by reason of a willful violation of section 2831.2 of Title 10 of the California Code of Regulations.

VII

The most serious violation found herein is Lo's failure to promptly produce (or ever produce) the trust account records, related documents and loan files requested by the Department. Although there is no evidence that Lo was intentionally attempting to thwart the Department's audit and investigation of ATF, her noncompliance had that effect. Considered in extenuation or mitigation of Lo's violation are the following facts: 1) after the rather precipitous closure of her business following the FBI's seizure of records, Lo apparently did not have ready access to the records requested; and 2) her lawyer in the ongoing criminal case was advising her not to talk to the Department. While some discipline is warranted, it would not be contrary to the public interest to allow Lo to keep her real estate broker license on a restricted basis. Considering that ATF is no longer in business, the only appropriate measure of discipline for its license is revocation.

ORDER

Chung Shung Lo:

All real estate licenses and licensing rights issued to respondent Chung Shung Lo by the Department of Real Estate are revoked pursuant to Determinations I through VI separately and for all of them; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of


respondent's conviction, including by a plea of nolo contendere, of a crime which is substantially related to the qualifications, functions or duties of a real estate licensee.

2. The restricted license issued to respondent may, be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this Decision.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
5. Respondent shall, within six months from the effective date of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until respondent passes the examination.

Able-Tao Financial, Inc.:

All real estate licenses and licensing rights issued to respondent Able-Tao Financial, Inc. by the Department of Real Estate are revoked pursuant to Determinations I through VI separately and for all of them.

DATED: August 22, 1995



NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings