

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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FILED
SEP 13 2002

DEPARTMENT OF REAL ESTATE

* * *

By *Juan Amato*

In the Matter of the Accusation of)
SAEED ALAMPAYKAR,)
Respondent.)
_____)

NO. H-8062 SF

OAH NO. N 2002040226

DECISION

The Proposed Decision dated August 25, 2002, 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.

This Decision shall become effective at 12 o'clock noon
on October 4, 2002.

DATED: September 7, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

SAEED ALAMPAYKAR,

Respondent.

No. H-8062 SF

OAH No. N 2002040226

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on June 24, 2002, in Oakland, California.

Department of Real Estate Counsel David B. Seals represented complainant Charles W. Koenig, Deputy Real Estate Commissioner, State of California.

Attorney at Law Martin Deutsch represented respondent Saeed Alampaykar, who was present.

The matter was submitted on June 24, 2002.

FACTUAL FINDINGS

1. Respondent Saeed Alampaykar is licensed by the Department of Real Estate as a real estate broker. The license expiration date is April 19, 2006.

2. Respondent represented Maryam Seraj in connection with her purchase of the house located at 1983 Downing Court, Santa Clara. Seraj had met respondent through her sister, who was a friend of respondent's wife. Seraj located the Downing Court house on her own, and her sister, a licensed real estate salesperson, obtained the keys and showed her the property. Through her sister, Seraj asked respondent to assist her in purchasing the house. (Seraj later learned that respondent was sharing his commission with her sister.)

Negotiation for Closing Costs Credit

3. On or about January 22, 1999, respondent prepared for Seraj the Residential Purchase Agreement and Receipt for Deposit reflecting her offer to pay \$315,000 for the house. According to Seraj, she had wanted to offer \$310,000, but respondent told her that it would be better for her to offer the higher amount and let him negotiate a \$4,500 credit from

the sellers for nonrecurring closing costs. Seraj maintains that she signed the offer for \$315,000 on the condition that respondent would negotiate this \$4,500 credit from the sellers. The written offer does not mention anything about the sellers giving the buyer this credit, and there is no other written documentation of the alleged promise made by respondent.

4. On or about January 26, 1999, the sellers accepted Seraj's offer to buy the house for \$315,000.

5. Seraj claims that on several occasions during escrow she asked respondent about the \$4,500 credit. She recalls him saying that he was going to talk to the sellers, and that she would get the credit at close of escrow, but he had "a different story" every time she talked to him.

6. Seraj raised the issue of the \$4,500 credit when she met respondent at the title company to sign the closing documents. Respondent said something to the effect that he thought he had some papers on that. The escrow officer called Dennis Perez, the sellers' agent, and asked him if he knew anything about a \$4,500 credit the buyer was supposed to receive. Perez said he did not. A few minutes later, respondent called Perez and asked him if they could negotiate a \$4,500 credit for nonrecurring closing costs. Perez consulted the sellers and they refused to give Seraj such a credit. (Seraj did receive from the sellers a \$5,350 credit for nonrecurring closing costs in lieu of a termite clearance on the house.)

7. Respondent denies that he had any discussion with Seraj when he prepared her offer about obtaining a \$4,500 credit from the sellers for nonrecurring closing costs. He claims that Seraj only asked him about getting such a credit when they were preparing to close escrow.

8. There were two other persons present when respondent prepared the offer for Seraj - respondent's wife, Maryam Rafipour, and Seraj's friend, Arash Khaghani. Not surprisingly, Rafipour testified that there was no discussion about negotiating a \$4,500 credit, and Khaghani testified that respondent agreed to negotiate such a credit in lieu of Seraj lowering her price.

9. The accusation alleges that when respondent prepared Seraj's offer he agreed that instead of her reducing her offering price from \$315,000 to \$310,000 he would negotiate for a \$4,500 credit for nonrecurring closing costs. It is alleged that respondent never intended to negotiate this \$4,500 credit, however.

These allegations were not proved by clear and convincing evidence. While respondent's denial that a \$4,500 credit was ever discussed before the day at the title company is self-serving and not particularly credible, Seraj's claim is not entirely credible either. It is inherently implausible that respondent would try to, or could, induce Seraj not to reduce her offering price by promising to negotiate a \$4,500 credit from the sellers for nonrecurring closing costs. A promise to negotiate is not a guarantee that such a credit will be obtained.

And, in fact, once the sellers accepted the offer, they would have no incentive to give Seraj a credit for nonrecurring closing costs without getting something in return, like the waiver of a termite clearance, so a promise to negotiate for such a credit would be virtually meaningless. This should have been clear to Seraj, even though she is not a real estate professional.

It does appear that Seraj had some belief that she should be getting a \$4,500 credit, since she raised the issue with the escrow officer. While she and respondent may have talked about trying to obtain a credit from the sellers, the evidence is insufficient to determine what representations, if any, respondent made on this subject.

Visual Inspection Disclosure

10. The Real Estate Transfer Disclosure Statement on the Seraj transaction contained different sections for disclosures by the sellers, the sellers' agent and the buyer's agent. The Agent's Inspection Disclosure to be completed and signed by the buyer's agent stated: "THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING." The agent then had a choice of checking the box stating "Agent notes no items for disclosure" or the box stating "Agent notes the following items: _____." Respondent did not complete or sign this section but left it blank. In the last section of the form after the sellers and buyer acknowledged receipt of a copy of the statement, respondent did sign in the space for the buyer's agent. His signature is dated February 28, 1999.

11. After claiming that he simply forgot to fill in the disclosure section, on cross-examination respondent stated that he did not make any disclosures because he is not an expert. (For the buyer's protection, he did arrange for a termite inspection, a roof inspection and a home inspection, and Seraj received a one-year home warranty.) Respondent maintained that he did perform a diligent visual inspection of the house at 1983 Downing Court, but he did not know he had to check one of the boxes in the agent's disclosure section on the Real Estate Transfer Disclosure Statement.

Mortgage Loan Disclosure Statement

12. Respondent negotiated the loan for Seraj to purchase the house at 1983 Downing Court. He put together the loan documents and obtained funding from Downey Savings, but the broker of record on the transaction was PSC, a mortgage company owned by Alexandra Hopewell. Respondent had an arrangement where he "put some loans through" PSC, utilizing PSC's wholesale lenders. Before Hopewell paid respondent his commission on a deal, he brought her the completed loan file for her to review. After the loan was closed, PSC retained a copy of the loan documents for the required three-year period.

13. Although respondent orally explained the terms of the loan to Seraj, he did not provide her with the written mortgage loan disclosure statement required to be given to the borrower within three business days after the broker receives a completed loan application.

14. In view of Seraj's testimony that she never received a mortgage loan disclosure statement and the fact that Hopewell's loan file did not contain the statement, respondent's assertion that he gave Seraj a mortgage loan disclosure statement and that the file he gave Hopewell included such statement signed by Seraj is rejected as not credible. Respondent did not keep a copy of the Seraj loan file, so his assertion is based on the fact that it has always been his practice to provide the borrower with a mortgage loan disclosure statement and to include the signed document in the loan file. Hopewell does not think that Downey Savings would have funded the loan without a signed mortgage loan disclosure statement, but she conceded that if the statement was missing from the file respondent could have had the borrower sign the statement later at the title company. (This would not comply with the three-day requirement, and the statement would not be in Hopewell's file, but it would satisfy the lender.)

15. According to respondent, he has negotiated 400 to 500 real estate loans during the 20 years he has been a real estate broker or real estate salesperson.

LEGAL CONCLUSIONS

Negotiation for Closing Costs Credit

1. Cause for license discipline does not exist under Business and Professions Code section 10176, subdivision (a) (substantial misrepresentation) or subdivision (i) (fraud or dishonest dealing), or Business and Professions Code section 10177, subdivision (g) (negligence or incompetence).

Visual Inspection Disclosure

2. In connection with his representation of Maryam Seraj in the purchase of the house at 1983 Downing Court, respondent had a duty under Civil Code section 2079, subdivision (a), "to conduct a reasonably competent and diligent visual inspection of the property offered for sale and to disclose to that prospective purchaser all facts materially affecting the value or desirability of the property that an investigation would reveal." The Real Estate Transfer Disclosure Statement utilized in the Seraj transaction is the approved disclosure form under Civil Code section 1102.6. Respondent's failure to complete and sign the Agent's Inspection Disclosure section constitutes cause for license discipline under Business and Professions Code section 10177, subdivision (g) (negligence or incompetence).

Mortgage Loan Disclosure Statement

3. Respondent violated Business and Professions Code section 10240 when he failed to provide Seraj with a written mortgage loan disclosure statement. Although the willful disregard or violation of this section would constitute cause for license discipline under Business and Professions Code section 10177, subdivision (d), the accusation does not allege that cause for license discipline exists under this or any other section.

Appropriate License Discipline

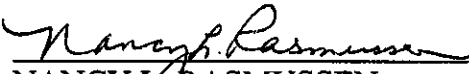
4. Although there is no evidence the buyer was harmed by respondent's failure to disclose the results of his property inspection, this is not simply a technical violation, as respondent's counsel contends. Respondent did not just forget to fill out the agent's disclosure section. Rather, he thought he did not have to fill it out because he is not an expert. At the time of the hearing, he still was laboring under this mistaken belief, which presents cause for concern. Some minimal measure of discipline is appropriate to assure future compliance. Suspending respondent's license, with the suspension stayed for one year under terms and conditions, would serve this purpose.

ORDER

All licenses and licensing rights of respondent Saeed Alampaykar under the Real Estate Law are suspended for a period of ten (10) days from the effective date of this Decision; provided, however, that said suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

DATED: August 25, 2002



NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

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

FILED
MAY 17 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

SAEED ALAMPAYKAR

Case No. By Shelly Chy
H-8062 SF
OAH No. N2002040226

Respondent

**SECOND CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the **OFFICE OF ADMINISTRATIVE HEARINGS, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **MONDAY--JUNE 24, 2002**, at the hour of **10:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: MAY 17, 2002

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS, Counsel

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

FILED
MAY 08 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

SAEED ALAMPAYKAR

Case No. H-8062 SF

OAH No.

Respondent

**FIRST CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

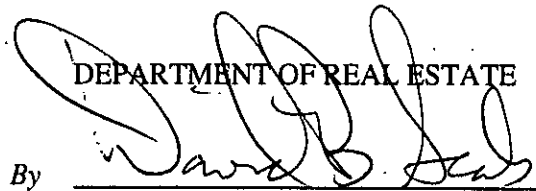
You are hereby notified that a hearing will be held before the Department of Real Estate at the **OFFICE OF ADMINISTRATIVE HEARINGS, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **MONDAY--JUNE 10, 2002**, at the hour of **10:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: MAY 8, 2002

DEPARTMENT OF REAL ESTATE
By 
DAVID B. SEALS, Counsel

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

FILED
APR 19 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

SAEED ALAMPAYKAR

By Shelly Cley

Case No. H-8062 SF

OAH No. N2002-04-0226

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the **OFFICE OF ADMINISTRATIVE HEARINGS, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **MAY 29, 2002**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: APRIL 19, 2002

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS, Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
MAR 05 2002

DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

) No. H-8062 SF

12 SAEED ALAMPAYKAR,

) ACCUSATION

13 Respondent.

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16 The Complainant, Charles W. Koenig, a Deputy Real
17 Estate Commissioner of the State of California for cause of
18 Accusation against SAEED ALAMPAYKAR (hereinafter "Respondent") is
19 informed and alleges as follows:

20 FIRST CAUSE OF ACCUSATION

21 I

22 The Complainant, Charles W. Koenig, a Deputy Real
23 Estate Commissioner of the State of California, makes this
24 Accusation in his official capacity.

25 II

26 Respondent is licensed and/or has license rights under
27 the Real Estate Law, Part 1 of Division 4 of the California

1 Business and Professions Code (hereinafter "Code") as a real
2 estate broker.

3 III

4 On or about January 23, 1999, Maryam Seraj (hereinafter
5 "Buyer"), requested that Respondent reduce from \$315,000 to
6 \$310,000 the offering price in the Residential Purchase Agreement
7 and Receipt for Deposit which he had prepared for her for the
8 purchase of the real property located at 1983 Downing Court,
9 Santa Clara (hereinafter the "Property").

10 IV

11 Respondent did not change the price but agreed with
12 Buyer that he would negotiate for a \$4,500 credit for
13 nonrecurring closing costs instead.

14 V

15 On or about January 25, 1999 the offer was accepted by
16 Edward and Susan Brayman (hereinafter the "Sellers") but nothing
17 in the offer mentioned the \$4,500 credit.

18 VI

19 On or about March 11, 1999, when Buyer was at the title
20 company signing the closing documents, Respondent called the
21 Sellers' agent in the transaction, Dennis Perez, to request that
22 the Sellers give Buyer the \$4,500 credit. This was the first time
23 the Sellers were asked about giving the \$4,500 credit and they
24 refused to do so.

25 VII

26 In truth and in fact, Respondent never intended to
27 negotiate a \$4,500 credit for Buyer.

1 VIII

2 The acts and/or omissions of Respondent to deceive
3 and/or make misrepresentations to Buyer with the intent to
4 substantially benefit himself as discussed above, constitute
5 violation of Sections 10176(a) and (i) and/or 10177(g) of the
6 Code and are grounds for the suspension or revocation of
7 Respondent's California real estate licenses.

8 SECOND CAUSE OF ACCUSATION

9 IX

10 There is hereby incorporated in this second, separate
11 and distinct, Cause of Accusation all of the allegations
12 contained in Paragraphs I through VIII of the First Cause of
13 Accusation with the same force and effect as if herein fully set
14 forth.

15 X

16 In connection with the sale of the Property to Buyer as
17 discussed in Paragraphs I through VIII above Respondent failed to
18 sign and designate the results of a diligent visual inspection of
19 the Property as required pursuant to Sections 1102 and 2079 of
20 the California Civil Code.

21 XI

22 The acts and/or omissions of Respondent described above
23 in Paragraph X are grounds for the revocation or suspension of
24 Respondents' real estate licenses under Section 10177(g) of the
25 Business and Professions Code.

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1 THIRD CAUSE OF ACCUSATION

2 XII

3 There is hereby incorporated in this third, separate
4 and distinct, Cause of Accusation all of the allegations
5 contained in Paragraphs I through VIII of the First Cause of
6 Accusation with the same force and effect as if herein fully set
7 forth.

8 XIII

9 Respondent arranged the financing for the Buyer for the
10 purchase of the Property described in the First Cause of
11 Accusation.

12 XIV

13 Respondent failed to provide mortgage loan disclosure
14 statements to Buyer regarding the financing of the Property in
15 violation of Section 10240 of the Code in conjunction with
16 Sections 2840 and 2840.1, Title 10, California Code of
17 Regulations (hereinafter the "Regulations").

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other provisions of law.

Charles W. Koenig
CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 5th day of March, 2002.