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MAY - 9 2008

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	NO. H-10275 SF
ELVIA D. REYNA and)	
RAJBINDER SINGH BAINS,)	OAH NO. 2008010314
)	
Respondents.)	

DECISION

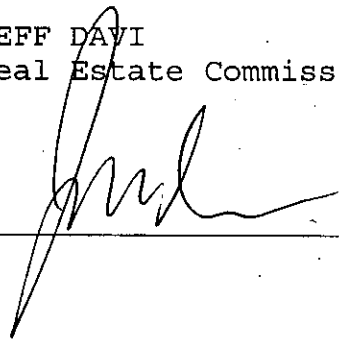
The Proposed Decision dated April 7, 2008, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

MAY - 8 2008

IT IS SO ORDERED 5.8.08

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ELVIA D. REYNA and
RAJBINDER SINGH BAINS,

Respondents.

Case No. H-10275 SF

OAH No. 2008010314

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on March 10, 2008.

Jeanine K. Clasen, Counsel, represented complainant E.J. Haberer II, Deputy Real Estate Commissioner, State of California.

Respondents Elvia D. Reyna and Rajbinder Singh Bains were present and represented themselves.

The matter was submitted on March 10, 2008.

FACTUAL FINDINGS

1. Complainant E.J. Haberer II, Deputy Real Estate Commissioner, issued the accusation in his official capacity.
2. Respondent Elvia D. Reyna holds a salesperson license issued by the Department of Real Estate. The license expires October 20, 2009.
3. Respondent Rajbinder Singh Bains holds a broker license issued by the Department of Real Estate. The license expires March 13, 2010. Bains is Reyna's employing broker.
4. In autumn 2006, respondent Reyna represented first-time home buyers Athar Abbasi and his wife Waheeda Almadi as they looked for a house to purchase. Abbasi met with Reyna on Sunday, December 10, 2006, regarding a house at 323 Silvertip Court, Milpitas, California (the property). Abbasi and his wife had been to an open house at the property and wanted to make an offer to purchase it. Reyna had not been present at the open house and had not seen the property. Reyna prepared the purchase offer that same day. She

had Abbasi write out a check for the \$8,000 earnest money deposit. She asked Abbasi to put "Title Company" on the check since she did not know what title company would be involved. Reyna made a copy of the check, then gave the check back to Abbasi for safekeeping, telling him she would collect the check from him the next day when she found out what title company's name should appear on the check.

Reyna and Abbasi then went to the property. This was Reyna's first opportunity to look at the property. She and Abbasi discussed some concerns about the floor plan, structural alterations, and the condition of the property. Reyna suggested that an immediate termite inspection be done.

5. Despite the concerns about the property, Abbasi had Reyna transmit the purchase offer to Judy Wang, the broker who represented James Armstrong, the owner of the property. Wang received the offer, including a copy of the deposit check, from Reyna on the morning of December 11, 2006. Paragraph 2A represented that the buyers (Abbasi and Almadi) had "given a deposit in the amount of \$8,000 to the agent submitting the offer." This was not a true statement, in that Abbasi still had possession of the \$8,000 check. Reyna did not inform Wang that she was not in possession of the check.

6. Although Reyna had thought she would retrieve the deposit check from Abbasi as soon as Monday morning, December 11, 2006; this did not occur. Abbasi's work schedule made it difficult for Reyna to meet with him. Reyna did not seek to benefit herself or have dishonest motives in representing that she had been given the deposit check. Reyna did not engage in fraud or dishonest dealing.

7. James Armstrong accepted the purchase offer on December 12, 2006.

8. The termite inspection was conducted on December 13, 2006. The inspection report noted that subterranean termites, "drywood" termites, and fungus/"dryrot" had been observed at the property. Abbasi and Almadi began to get "cold feet" about the property.

9. Abbasi and Almadi decided they did not want to go through with the purchase. They told Reyna to prepare a document canceling the contract.

10. Reyna prepared the cancellation document, which she faxed to Wang on December 15, 2006. Paragraph 2D of the cancellation document disclosed, "Deposit had not yet been deposited in escrow." Reyna had not previously informed Wang that she did not have the deposit check and had not deposited it into escrow.

11. Reyna has been in the real estate business for 32 years, with an untarnished record. She prides herself for being ethical, counseling and protecting her clients, and respecting her fiduciary responsibilities. She is an active member of her profession. There was no showing that Reyna has been previously disciplined or the subject of a complaint regarding her professional conduct.

12. Carmen Mainor (Country Estates Realty, Milpitas), Helia Carvalho, Frank and Eunice Harms, and Mayella Gardea wrote letters in support of Reyna. These business associates, clients and friends attest to her integrity, ethics, tireless work for her clients, professionalism, attention to detail, honesty and good judgment.

13. In December 2006, respondent Rajbinder Singh Bains supervised about 60 salespersons, including Reyna. Bains held regular meetings with his salespeople and escrow coordinators. His salespeople forwarded completed contracts to the escrow coordinators, who were responsible for collecting documents and verifying deposits into escrow. It was not established that Bains failed to reasonably supervise Reyna.

LEGAL CONCLUSIONS

1. Respondent Reyna's representation that the buyers had "given a deposit in the amount of \$8,000 to the agent submitting the offer" was a misrepresentation of the facts, made in the course of her licensed duties. Complainant has established cause to discipline Reyna pursuant to Business and Professions Code section 10176, subdivision (a).

2. Complainant alleged that Reyna engaged in fraud and/or dishonest dealing. The evidence did not establish that Reyna engaged in fraud or dishonest dealing. There was no showing that Reyna sought to benefit herself or had dishonest motives in representing that she had been given the deposit check.

Complainant alleged that respondent Reyna was subject to discipline under Business and Professions Code section 10177, subdivision (i). Subdivision (i) pertains to government employment and the violation of confidential records, and has no demonstrated application to the issues in this matter. Complainant apparently meant to allege that Reyna was subject to discipline under Business and Professions Code section 10177, subdivision (j), which concerns fraud and dishonest dealing. It appears complainant's citation of subdivision (i) rather than subdivision (j) was a simple mistake. In any event, the record did not support the imposition of discipline under either provision.

3. Reyna's representation that she had been given the deposit check also appears to have been a simple mistake. She had been "given" the check the day before. She made a copy of it, and made the arguably poor decision, on a Sunday, to have Abbasi hold the check rather than holding it herself. She faxed the copy to Wang with the purchase offer the next morning. It is entirely plausible, given the events the day before, that Reyna believed she had been given the deposit check.

Reyna has practiced real estate for over 30 years with no imposition of discipline. She is respected by her business associates, clients and friends for her integrity and professionalism. Under the circumstances here presented, protection of the public does not require the imposition of disciplinary action. Imposition of discipline against Reyna would serve no useful purpose and would be unnecessarily punitive. The proceedings against her will be terminated without the imposition of discipline.

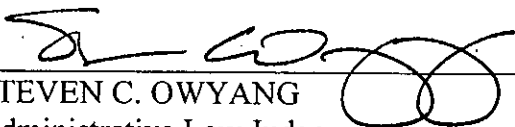
4. Complainant did not establish that respondent Bains failed to exercise reasonable supervision of the activities of respondent Reyna. Complainant did not establish cause to discipline Bains pursuant to Business and Profession Code section 10177, subdivision (h). The accusation will be dismissed as to Bains.

ORDER

1. The proceedings against respondent Elvia D. Reyna are terminated without the imposition of discipline.

2. The accusation against respondent Rajbinder Singh Bains is dismissed.

DATED: April 7, 2008



STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE

By H. Max

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

12 In the Matter of the Accusation of)
13 ELVIA D. REYNA and) No. H-10275 SF
14 RAJBINDER SINGH BAINS,) ACCUSATION
15 Respondents.)

16 The Complainant, E.J. HABERER II, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against ELVIA D. REYNA (herein "Respondent REYNA"), and RAJBINDER
19 SINGH BAINS (herein "Respondent BAINS"), is informed and alleges
20 as follows:

21 I

22 The Complainant, E.J. HABERER II, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation
24 in his official capacity.

25 II

26 At all times herein mentioned, Respondent BAINS was
27 and now is licensed and/or has license rights as a real estate

1 broker under the Real Estate Law, Part 1 of Division 4 of the
2 Code (herein "the Code.")

3 III

4 At all times herein mentioned, Respondent BAINS
5 engaged in the business of, acted in the capacity of, advertised
6 and assumed to act as a real estate broker in the State of
7 California within the meaning of Section 10131(a) of the Code,
8 including the operation and conduct of a real estate resale
9 brokerage with the public wherein, Respondent BAINS, on behalf
10 of others, for compensation and in expectation of compensation,
11 sold and offered to sell, bought and offered to buy, solicited
12 prospective sellers and purchasers of, solicited and obtained
13 listings of, and negotiated the purchase and sale of real
14 property.

15 IV

16 At all times herein mentioned, Respondent REYNA was
17 and now is licensed and/or has license rights as a real estate
18 salesperson under the Real Estate Law, Part 1 of Division 4 of
19 the Code, and was employed as a real estate salesperson by
20 Respondent BAINS perform the acts and conduct the activities
21 described in Paragraph III, above.

22 V

23 On or about December 11, 2006, Respondent REYNA,
24 representing Athar Abbasi and Waheeda Almadi as prospective
25 buyers (herein "the Buyers"), solicited and obtained an
26 agreement by James Armstrong (herein "the Seller") to sell real
27 property located at 323 Silvertip Court, Milpitas, California

1 (herein "the Property"), for the price of \$525,000 by
2 representing, contrary to fact, that Respondent REYNA had
3 received from the Buyers a deposit.

4 VI

5 In fact, at the time Respondent REYNA transmitted the
6 Buyers' purchase offer, Respondent REYNA had not received from
7 the Buyers any check, nor any other form of payment, for the
8 Buyers' initial deposit, and Respondent Reyna was aware of this
9 fact.

10 VII

11 At all times herein mentioned, between December 11,
12 2006 and December 2006, Respondent REYNA concealed and failed to
13 disclose the fact that the Buyers had not, in fact, provided an
14 initial deposit to Respondent REYNA or any other entity.

15 VIII

16 The acts and omissions of Respondent REYNA described
17 above constitute the making of a substantial misrepresentation
18 and fraud and/or dishonest dealing, and are cause for the
19 suspension or revocation of the licenses and license rights of
20 Respondent REYNA under Sections 10176(a) and 10177(i) of the
21 Code.

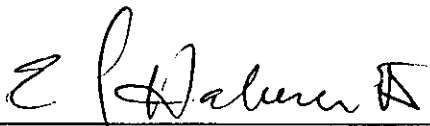
22 IX

23 At all times mentioned herein, Respondent BAINS failed
24 to exercise reasonable supervision over the acts of Respondent
25 REYNA in such a manner as to allow the acts and omissions of
26 Respondent REYNA, described above, to occur, which is cause for

27 ///

1 the suspension or revocation of the licenses and license rights
2 of Respondent BAINS under Section 10177(h) of the Code.

3 WHEREFORE, Complainant prays that a hearing be
4 conducted on the allegations of this Accusation and that upon
5 proof thereof, a Decision be rendered imposing a disciplinary
6 action against all licenses and license rights of Respondents
7 REYNA and BAINS under the Real Estate Law (Part 1 of Division 4
8 of the Business and Professions Code), and for such other and
9 further relief as may be proper under other applicable
10 provisions of law.

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12 _____
13 E.J. HABERER II
14 Deputy Real Estate Commissioner

14 Dated at Oakland, California
15 this 18th day of December, 2007.

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