

FILED

OCT - 7 2008

DEPARTMENT OF REAL ESTATE

By K. Conteras

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
MARK L. REED, )  
Respondents. )  
\_\_\_\_\_ )

NO. H-10425 SF  
OAH NO. N-2008070127

**DECISION**

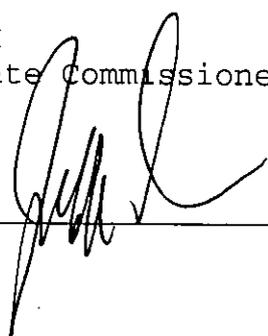
The Proposed Decision dated September 5, 2008, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon  
on October 27, 2008.

IT IS SO ORDERED \_\_\_\_\_

10/3/08

JEFF DAVI  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MARK L. REED,

Respondent.

Case No. H-10425 SF

OAH No. 2008070127

**PROPOSED DECISION**

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on September 2, 2008.

Daniel E. Kehew, Counsel, represented complainant.

Respondent Mark L. Reed was present and represented himself.

The matter was submitted on September 2, 2008.

**FACTUAL FINDINGS**

1. Charles W. Koenig made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. At all times herein Mark L. Reed (respondent) was and now is licensed as a real estate broker under the Real Estate Law. His license is due to expire July 8, 2010.

3. At all times mentioned, respondent engaged in the business of, acted in the capacity of, advertised, and assumed to act as a real estate broker within the meaning of the law, including the operation and conduct of a real estate sales business with the public wherein, on behalf of others, for compensation or in expectation of compensation, respondent sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase, sale and exchange of real property.

4. On May 23, 2005, in acting as a real estate broker, respondent obtained the listing of a residential home identified as 511 5<sup>th</sup> Street (property) in Vallejo, California, from a seller identified as Dave R. Swanburg (seller).

5. On May 23, 2005, respondent established an ownership interest in the property by loaning money to the seller for repairs to the property secured by the property. The final loan amount was for \$35,000. It is not a defense that respondent never recorded the note and deed of trust.

6. On June 29, 2005, respondent was approached by a buyer, who expressed interest in purchasing the property from the seller after seeing it on the internet.

7. On June 29, 2005, respondent solicited and obtained buyer's agreement to enter into a dual-agency arrangement, by which respondent would represent as agent both seller and buyer in the property sale.

8. Respondent failed to disclose to the buyer respondent's ownership interest in the property. The buyer relied on respondent for advice on the value of the property. Respondent's ownership interest in the property was a material fact that the buyer should have been told at or before agreeing to the dual-agency arrangement.

9. The fact that there were references to the fact that the seller owed respondent money buried in the title company paperwork is not sufficient disclosure for purposes of the law. Further, the fact that respondent may have talked about paying for certain repairs to the property in front of the buyer is not sufficient disclosure of an ownership interest in the property.

10. Respondent acknowledges that it would have been best to disclose the information at the time respondent became the buyer's agent. Disclosure in writing would have been best; however, disclosure is not required to be in writing by law. Respondent contends, however, that he was only obligated to disclose the information sometime during the escrow. That would deprive the buyer from making an informed decision about using the broker as his agent. Such a material fact must be disclosed before buyer is required to make a decision that would be affected by the information. Respondent's failure to disclose his ownership interest in the property is a violation of law.

11. Respondent did not have an "underhanded" motive in failing to disclose. He did not hide the repairs from buyer or the fact that respondent was paying for them.

#### LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 3 through 9, cause for disciplinary action exists pursuant to Business and Professions Code sections 10176, subdivision (a) and 10177, subdivision (o) (failure to disclose ownership interest).

2. The matters set forth in Findings 10, and 11, have been considered in making the following order.

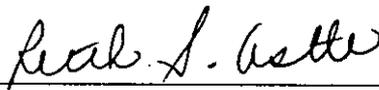
ORDER

All licenses and licensing rights of respondent Mark L. Reed under the Real Estate Law are revoked; 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 therefore 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 or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as 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 two years have elapsed form the effective date of this decision.
4. Respondent shall, with 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 the 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: \_\_\_\_\_

9/5/08



RUTH S. ASTLE

Administrative Law Judge

Office of Administrative Hearings

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FILED

JUN - 4 2008

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 MARK L. REED ) H-10425 SF  
13 Respondent. ) ACCUSATION

14 The Complainant, CHARLES W. KOENIG, a Deputy Real  
15 Estate Commissioner of the State of California, for cause of  
16 Accusation against MARK L. REED (hereinafter "Respondent"), is  
17 informed and alleges as follows:

18 I

19 Complainant, CHARLES W. KOENIG, a Deputy Real Estate  
20 Commissioner of the State of California, makes this Accusation  
21 against Respondent in his official capacity and not otherwise.

22 II

23 At all times mentioned herein, Respondent was and now  
24 is licensed and/or has license rights as a real estate broker  
25 under the Real Estate Law, Part 1 of Division 4 of the California  
26 Business and Professions Code (hereinafter "the Code"), with said  
27 license due to expire July 8, 2010.

1 III

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

12 IV

13 On or about May 23, 2005, in acting as a real estate  
14 broker as described in Paragraph III, above, Respondent obtained  
15 the listing of a residential home identified as 511 5th Street  
16 (hereinafter "5th Street Property") in the City of Vallejo,  
17 California, from a seller identified as Dave R. Swanburg  
18 (hereinafter "Seller").

19 V

20 On or about May 23, 2005, Respondent established an  
21 ownership interest in the 5th Street Property; specifically,  
22 Respondent loaned money to Seller secured by the 5th Street  
23 Property.

24 VI

25 On or about June 29, 2005, Respondent was approached  
26 by buyer Behrouz Iravanchy (hereinafter "Buyer"), who expressed  
27 interest in purchasing the 5th Street Property from Seller.

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VII

On or about June 29, 2005, Respondent solicited and obtained Buyer's agreement to enter into a dual-agency arrangement, by which Respondent would represent as agent both Seller and Buyer in the 5th Street Property sale.

VIII

In soliciting, obtaining, and carrying out the dual-agency relationship described in Paragraph VII, above, Respondent failed to disclose to the Buyer the Respondent's ownership interest in the 5th Street Property, described in Paragraph V, above.

IX

The facts alleged in Paragraphs III, IV, V, VI, VII, and VIII, above, are grounds for the suspension or revocation of the license and license rights of Respondent under Sections 10176(a) and 10177(o) of the Code.

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 Code) and for such other and further relief as may be proper under other applicable provisions of law.

  
CHARLES W. KOENIG  
Deputy Real Estate Commissioner

Dated at Sacramento, California  
this 4th day of June, 2008.