

FILED

MAY 15 2013

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By K. Contreras

In the Matter of the Accusation of)	
)	NO. H-11446 SF
ARTURO GARCIA SANCHEZ,)	
)	2012100389
Respondent.)	
_____)	

DECISION

The Proposed Decision dated March 15, 2013, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following correction is made:

Page 5, Legal Conclusion, Paragraph 1, Line 3: shall read:

“management. Further, pursuant to sections 10176, subdivisions (a), (c), (e), and (i); and”.

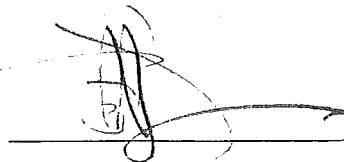
This Decision shall become effective at 12 o'clock noon on

JUN - 4 2013

IT IS SO ORDERED

May 13, 2013

WAYNE S. BELL
Real Estate Commissioner



By: Jeffrey Mason
Chief Deputy Commissioner

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

MAY -7 2013

DEPARTMENT OF REAL ESTATE

By K. Contreras

In the Matter of the Accusation Against:

ARTURO GARCIA SANCHEZ;

Respondent.

OAH No. 2012100389

PROPOSED DECISION

Administrative Law Judge Paul Slavit, Office of Administrative Hearings, State of California, heard this matter on February 13, 2013, in Oakland, California.

Mary F. Clarke, Real Estate Counsel, represented complainant Robin Tanner, Deputy Real Estate Commissioner of the State of California.

Phillip M. Adelson, Esq. represented respondent Arturo Garcia Sanchez who was present.

The matter was submitted on February 13, 2013.

FACTUAL FINDINGS

1. Complainant Robin Tanner, Deputy Real Estate Commissioner, filed this accusation in her official capacity.

2. Respondent currently is licensed by the Department of Real Estate (department) as a real estate salesperson. He was conditionally licensed in 2003, and then fully licensed in 2005.

The Accusation

3. On April 11, 2011, the department received a complaint against respondent alleging that respondent was acting as a property manager, without proper licensure, under the name AS Property Management.

4. The evidence establishes that at the time of the complaint: 1) respondent was a licensed real estate salesperson, operating under the brokerage of S&L Loans, Inc.; 2) independent of his employment with S&L, respondent established a property management company without notifying the department or his broker-employer, or otherwise obtaining

proper licensure for the business; 3) respondent represented himself to the public as a property manager; 4) he maintained a bank account for his property management business, but did not establish the account in the name of a broker; or designate it as a trust account; and 5) over a two-year period, respondent managed five properties in the capacity of professional property manager, without a broker's license.

Respondent was cooperative throughout the department's investigation, providing documentation and a signed declaration as requested. Although the facts are indicative of violations, there is no evidence that respondent mishandled the properties he managed, rents received, disbursements made, or the like.

Respondent's Evidence

5. Respondent is a trained engineer, and had a 20-year career in the food processing industry.

6. In the early 2000's, while still employed in that industry, he began investing in real estate on his own account. He had initial success in his investments, and decided to obtain his real estate license. In 2003, he was granted a conditional license, became employed by a broker, and continued to invest in his own real estate holdings.

7. In 2008, respondent changed employment to S&L Home Loans, Inc. (S&L). S&L had two operating branches—Meridian Creek Properties (MCP), which conducted residential real estate sales, and S&L Home Loans, a loan originator. Respondent worked for the real estate branch of the business, listing and selling properties. He dealt principally with properties owned by lenders following foreclosure. Neither S&L Home Loans nor MCP performs property management services, and respondent's contract with S&L did not include or extend to property management.

8. In the real estate crash of the late 2000's, respondent was unable to sustain his real estate investments, and eventually lost all of his properties to foreclosure. However, he would cooperate with the foreclosing lenders in preparing the properties for potential short sale or to turn over the properties to them. In at least one instance, the foreclosing lender was Dan Shaw of Cupertino Capital and LG Servicing, Inc.

9. Mr. Shaw saw that respondent is bilingual in Spanish and English. Further, respondent has knowledge about clean up, maintenance, eviction of holdover tenants, and other issues common to foreclosed properties; and has an active real estate license and experience. This, coupled with his language skills, made respondent particularly helpful to someone like Shaw whose business extended to properties in Hispanic communities. As a result, Shaw and respondent discussed, and respondent began working with Shaw in the management of his company's foreclosed properties. In 2009, respondent created AS Property Management as a property management business in furtherance of this work.

10. Over time, respondent managed five properties—two in Santa Clara County, two in Contra Costa County, and a property on International Boulevard in Oakland, which was the basis for the initial complaint. As noted, in this capacity he negotiated rental agreements with tenants, collected rents on behalf of the property owners, paid bills, maintained and repaired the properties as required, and/or prepared them for listing and sale. Respondent maintained a bank account for his property management company; however, it was not designated a trust account as required when holding funds such as deposits, rents, or other third-party funds on behalf his property owner clients.

11. Respondent's compensation for property management varied. Sometimes he simply billed for services; in one case, he received a percentage of rents; in another case, he was the listing agent and received a commission when the property sold.

12. Although respondent denies concealing his property management business from his employer S&L, and the existence of his business was general knowledge in the S&L offices, respondent did not specifically inform his employer about it. S&L did not engage in property management, such that it could not, and would not act as responsible broker for his property management business.

13. Respondent candidly acknowledges his error in conducting property management without the proper broker's license, or operating under a responsible broker. He states that when he began managing properties for others, he did not understand that he needed a broker's license; and that only after being contacted by the department did he realize he was in violation of the law. He is apologetic about his violation, remorseful, and has stated that it will not happen again.

14. The declaration that respondent signed stated that he knew what he was doing was wrong. However, he credibly testified that he knew this at the time he executed the declaration, but not at the time he actually was engaged in property management. Notably, the declaration was not drafted by respondent, but by the department's investigator, based on his notes and recollection of his interview with respondent. The investigator does not recall whether the statement that respondent "knew what he was doing was wrong" was an exact quote.

15. Immediately after the department informed respondent about his alleged violation, he ceased his property management activities in a manner that would not be injurious to the parties he had been serving. He arranged for future rents to be tendered directly to the appropriate property owners, and closed the business bank account as soon as practicable by disbursing funds to the appropriate parties.

Evidence in Mitigation

16. Once contacted by the department, respondent voluntarily ceased his property management activities. Since then he has taken some course work to better inform himself about the duties and obligations of a property manager.

17. Respondent has a history of involvement with community activities sponsored by the Alum Rock Business District. Frank Cortez, a business owner and president of the Alum Rock Business District association, testified to support respondent. Cortez explained that the business district traditionally sponsors two annual events—a salsa festival and a Christmas season event. For three years, respondent has volunteered, helping with both the organization and running of the events. Respondent was successful in lining up vendors and sponsors for the events. In one instance, respondent supplied one of his own employees to assist at the salsa festival.

Cortez finds respondent to be honest, well organized and a decent man. In the general Alum Rock community, respondent has a reputation for truthfulness, honesty and integrity.

18. Ana Bertha Garcia is a commercial tenant at the International Boulevard property. Garcia testified at the hearing and offered a letter of support. Garcia finds respondent to be honest and helpful in his dealings with her, and stated that he is a good property manager.

19. Tom Beck worked with respondent at S&L in residential sales. He finds respondent to be straightforward, honest and good in his dealings with clients. Although he is aware of the present accusation, he nonetheless feels that respondent is someone who acts honestly and above-board.

20. After the accusation was filed by the department, respondent was terminated by S&L. Dan Shaw, whose properties respondent had been managing, had a discussion with respondent in which they agreed that respondent would take classes and review current real estate law and regulations to get up-to-date on his responsibilities as a property manager. With that, Shaw agreed to employ respondent to manage Shaw's properties. While Shaw is unhappy that respondent got himself into this problem, he has a high opinion of respondent and his reputation for honesty and veracity. He is not aware of any problems resulting from respondent's management of Shaw's properties.

21. Although the department argues that Shaw might have lost commission income due to respondent's unlicensed activities, Shaw did not claim any such losses during his testimony, and it appears generally that there were no third party losses occasioned by respondent's actions.

22. Finally, respondent is the principal source of family income; his spouse earns some money by babysitting and odd jobs. He currently earns money from occasional real estate commissions, and some contracting work. He no longer owns any property, and rents his home. It appears that his decision to create his independent property management business was motivated, in part, by financial pressures occasioned by his real estate losses, and reduced real estate commissions resulting from the harsh real estate market of recent years.

Costs

23. In connection with the investigation and prosecution of this accusation, the department submitted a certification of costs for investigation in the sum of \$2,186, and enforcement/attorneys' fees in the sum of \$2,091.50, a total of \$4,277.50. The case of *Zuckerman v. Board of Chiropractic Engineers* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the respondent has been successful at the hearing in getting charges reduced or dismissed; respondent's subjective good faith belief in the merits of his position; whether the respondent has raised a colorable challenge to the proposed discipline; the financial ability to pay the cost award; and whether the scope of the investigation was appropriate to the alleged conduct of the respondent.

24. No evidence was offered to dispute the reasonableness of the fees requested. Although respondent described in general terms his losses in the real estate market, and seems to have a limited income at this time, the proposed decision will allow him to continue his work in the profession, earn commissions, and presumably keep his current employment. As such, costs of \$2,186 for investigation, and \$2,091.50 for enforcement/attorneys' fees, totaling \$4,277.50 are deemed reasonable, and will be awarded without reduction.

LEGAL CONCLUSION

1. Pursuant to Business and Professions Code sections 10130 and 10131, only a licensed real estate broker, or one operating under a broker's license, may conduct property management. Further, pursuant to sections 10176, subdivisions (a), (c), (e), and (j); and 10177, subdivisions (d) and (j); and Code of Regulations, Title 10, section 2731, cause for discipline exists when a licensee engages in misrepresentation, commingling funds, or other wrongful or dishonest conduct. As such, cause for discipline exists in that respondent operated, and held himself out as, a property management business without appropriate licensure, established and operated a business entity without notifying the department or obtaining proper licensure, and established and maintained a business banking account without designating it as a trust account in the name of a responsible broker--all as set forth in Factual Findings 1 through 4.

2. In California Code of Regulations, title 10, section 2912, the department has established criteria to be considered when evaluating an applicant's rehabilitation from the acts or crime that form the basis for discipline. In this instance, respondent has not committed a crime. However, the following criteria are relevant here, including the passage of time since the incident on which discipline is based; restitution; stability of family life; enrollment in educational or vocational training courses for self-improvement; involvement in community programs; and the absence of subsequent wrongful acts.

3. In this case, little more than a year has passed since respondent received notice that his property management business was unlawful, and he has closed the business. Other factors weighing in respondent's favor include: the lack of any known or claimed losses resulting from his activities; his family life appears stable, and he is committed to provide for his family; and he is involved in community and charitable activities.

Even though nothing in respondent's actions was malicious or ill intentioned, he now has an understanding of his violation, and has addressed the problem by ceasing his independent business. He now performs property management solely for his broker-employer Shaw. He has educated himself on his responsibilities as a property manager, voluntarily taken a course to help him understand his actions and avoid recurrence, and credibly states that such a violation will not happen again.

4. Respondent's case is challenging. Real estate salespersons are fiduciaries that should be honest, act with the highest level of integrity, and be aware of and follow applicable law. In this instance, respondent operated an unlicensed property management business for approximately two years. On the other hand, all evidence and testimony indicates that he acted honestly while conducting that business, and that honesty and integrity are hallmarks of his reputation.

It is reasonable to conclude that conducting property management for others--while troubling in its duration--was an isolated and uncharacteristic episode. Respondent has no criminal or disciplinary problems in his real estate career; and significantly, has the support of his employer, former colleagues and tenants. As such, it is determined that the public interest will be protected by issuance of a restricted license.

ORDER

Respondent Arturo Garcia Sanchez's real estate salesperson's license is revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to of Business and Professions Code section 10156.5, if respondent makes application therefor and pays to the department 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 Business and Professions Code section 10156.7, and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner (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 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 from the effective date of this decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the department, which shall certify:


(a) That the employing broker has read the decision of the commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed: 1) the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license; and 2) such other courses as the commissioner may deem reasonable and proper to ensure that respondent is well informed about the duties and responsibilities of his 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.

Respondent Sanchez shall pay the department the sum of \$4,277.50 for reasonable costs of investigation and prosecution.

DATED: March 15, 2013

A handwritten signature in black ink, appearing to read "Paul Slavit", written over a horizontal line.

PAUL J. SLAVIT
Administrative Law Judge
Office of Administrative Hearings