

FILED

BEFORE THE BUREAU OF REAL ESTATE

SEP 29 2014

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By H. Contreras

In the Matter of the Accusation of

LEONARD DAENELE SARGENT,

Respondent.

)
) NO. H-11648 SF
)
)
) OAH NO. 2014040863
)
)

DECISION

The Proposed Decision dated August 25, 2014, 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)(c) of the Government Code, the following corrections are made to the Proposed Decision:

On pages 4 and 5 of the Proposed Decision, under Legal Conclusions, number one, the last sentence of number one is deleted and corrected to read:

“Pursuant to Business and Professions Code section 10176, subdivision (a), and section 10176, subdivision (i), cause exists to discipline Respondent’s real estate salesperson license by reason of the matters set forth in Findings 4 through 12, and 16.”

On page 5 of the Proposed Decision, under Legal Conclusions, number two, the entire paragraph is deleted and corrected to read:

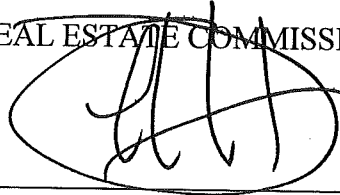
“2. Business and Professions Code section 10177, subdivision (g),⁵ provides a real estate salesperson’s license may be disciplined for “Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license,” and pursuant to subdivision (j), when a licensee has “Engaged in any other conduct, for the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.”

Pursuant to Business and Professions Code section 10177, subdivision (g), and section 10177, subdivision (j), cause exists to discipline Respondent's real estate sales license by reason of the matters set forth in Findings 4 through 12, and 16."

This Decision shall become effective at 12 o'clock noon on OCT 20 2014

IT IS SO ORDERED _____

REAL ESTATE COMMISSIONER

A handwritten signature in black ink, appearing to be 'JM', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LEONARD D. SARGENT,

Respondent.

Case No. H-11648 SF

OAH No. 2014040863

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, Office of Administrative Hearings, State of California, heard this matter on August 7, 2014, in Oakland, California.

Mary F. Clarke, Counsel, Bureau of Real Estate, represented complainant Robin S. Tanner, Deputy Real Estate Commissioner.

Respondent Leonard D. Sargent was present and represented himself.

The matter was submitted on August 7, 2014.

FACTUAL FINDINGS

1. Complainant Robin S. Tanner, filed the Accusation in her official capacity as a deputy real estate commissioner for the Bureau of Real Estate, State of California (Bureau).
2. Leonard D. Sargent (respondent) was originally issued a real estate salesperson license by the Bureau on February 21, 2006. The license was revoked, and respondent was issued a restricted license on November 4, 2009.¹ The restricted license will expire on January 23, 2018.

¹ An accusation was filed against respondent's license in 2009, seeking suspension or revocation of the license based upon respondent's convictions for driving under the influence of alcohol. Following a hearing before an administrative law judge, respondent's license was revoked, but respondent was granted a restricted license.

Case Summary

3. The accusation alleges respondent changed the names and dates on certain documents associated with a short sale real estate transaction. These documents were a cashier's check, an invoice for services, and a certificate of compliance issued by the East Bay Municipal Utilities District. Respondent does not dispute the fact that he changed the documents; the issue is whether the changes constitute a violation of the real estate laws.

Bureau's Evidence

4. The real property involved in the transaction was a house located in Oakland (property) owned by Kristina Le. Le received authority from the mortgage lender, Wells Fargo Bank (Wells Fargo) to sell the property in a short sale.² This means that at the time of sale, the bank was willing to accept less than the full amount of the outstanding mortgage, and to forgive the balance. Le hired respondent to serve as her real estate agent to sell the property.

5. As a condition of approving a short sale, Wells Fargo required the transaction to comply with certain requirements. One of these conditions was that: "Neither the Borrower[s] nor the purchaser[s] will receive any funds or commissions from the sale of the Mortgaged Premises." This provision was contained in a document called the Short Sale Affidavit. It did not, however, preclude respondent, as the listing agent, from receiving a commission on the sale.

6. In order for the property to be sold, the City of Oakland required an inspection of the sewer line (sewer lateral) which connects the property to the sewer system. The city required the sewer lateral to be replaced, and this work was performed by a company called Streamline Inc., apparently in the last week of July or the first week of August 2013. Le paid Streamline directly for its work with a cashier's check dated August 7, 2013, in the amount of \$5,780. When the work was complete, the East Bay Municipal Utility District issued a Compliance Certificate for Private Sewer Lateral dated August 2, 2013.

7. Le purchased the cashier's check with her own money, but respondent nonetheless subsequently reimbursed the full amount in cash directly to her to cover the expense. He had no obligation to do so.

8. In the meantime, respondent was marketing the property. The first buyer respondent found for the property was unable to obtain financing. Nonetheless, the sewer lateral was replaced in anticipation of a sale to that purchaser. Respondent found a subsequent purchaser, and an HUD 1 closing statement, which reflected the purchase price and all other transaction expenses, was prepared in anticipation of closing the transaction.

² At some point, Wells Fargo sold the loan to a group of investors who were also involved in approving the terms of the short sale.

On the HUD 1, a line item was included that provided: "Short Sale Fee to Agent Reimbursement \$5,000." It was by virtue of this line item that respondent sought reimbursement for the cost of the lateral repair. The investors to whom Wells Fargo had sold the original loan would not accept this line item when it was first called to their attention, because they believed it was inconsistent with the terms of the Short Sale Affidavit.

9. When the \$5,000 fee was not approved, respondent contacted the individual at Wells Fargo who was responsible for handling the transaction, and explained that the \$5,000 expense was for upgrading the sewer lateral and this was a city compliance requirement. He felt it was unlike other repairs or upgrades to the property that were precluded by the terms of the Short Sale Affidavit. Respondent also advised the buyer that he had paid for the work and was seeking reimbursement. Wells Fargo, in turn, asked respondent for proof of payment.

10. As discussed in Finding 5, Le had originally incurred the cost of the repair. Respondent requested her to provide him with copies of the original cashier's check, the invoice from Streamline, and the compliance certificate. He then changed the purchaser's name on the cashier's check from "Kristina A. Le" to "Leonard Donnie Sargent" and the date of the check from "August 7, 2013" to "September 9, 2013." Respondent also changed the name on Streamline's invoice from "Kristina Le" to "302EOF, LLC/Donnie Sargent (Realtor)"³ and the invoice date to "September 9, 2013." Respondent also changed the date on the compliance certificate from "August 2, 2013" to "September 11, 2013." These items were submitted to Wells Fargo in support of the \$5,000 fee on the closing statement.

11. Wells Fargo became concerned about the documents respondent submitted and its fraud unit began an investigation. Le is a Wells Fargo employee, and she became a potential subject of the investigation. Le was not aware respondent had changed documents, and she cooperated with the investigation. In early November 2013, she repaid respondent the \$5,780 he had reimbursed her for the repairs.

12. Once Wells Fargo discovered that these documents had been changed, it refused to permit the transaction to close if respondent was the real estate agent. Ultimately, the time for the short sale expired before a determination was made by Wells Fargo and the investors as to whether the \$5,000 reimbursement would be authorized. For this reason, the issue of whether Wells Fargo or the investors to whom the loan was sold would permit the sewer lateral repair expense to be paid from the sale proceeds not was determined.

Costs of Investigation and Enforcement

13. Complainant has incurred investigation and enforcement costs in the amount \$3,329 in connection with this matter. This amount represents \$1,656 in investigative costs and \$1,673 in legal costs. These charges are supported by declarations that comply with California

³ "302EOF, LLC" is the name of the property purchaser.

Code of Regulations, title 1, section 1042. In the absence of any evidence or argument to the contrary, these costs are found to be reasonable.

Respondent's Evidence

14. Respondent does not dispute that the cashier's check, the Streamline receipt or the compliance certificate were changed in the manner described by the Bureau. Respondent denies that these changes constitute fraud or deceit, or that they resulted in harm to any third party, or in any gain to himself.

15. It is undisputed that respondent paid Le \$5,780 in cash to reimburse her for the costs she incurred in replacing the sewer lateral. Because of the nature of this work, which was a regulatory condition that had to be fulfilled in order for the property to be sold, respondent believes it was a proper expense to include on the HUD 1 closing statement.

16. Respondent describes the changes he made to the cashier's check, the Streamline statement and the compliance certificate as "updates," which were intended to show that he incurred the expense for the sewer lateral upgrades and to support payment of this expense as a cost properly reimbursed from the transaction proceeds.

17. Respondent persuasively testified that the property buyer was informed about the costs associated with the sewer lateral and understood it would be paid to him at closing.

18. Respondent testified that he was only seeking reimbursement of \$5,000, when in fact he paid \$5,780 to Le. He was willing to incur an unreimbursed cost of \$780 because he was representing both the buyer and the seller in the transaction. He advanced the money to Le because she was struggling financially, and he thought it would "make himself look good" by advancing the money to her.

19. Respondent cooperated fully with the Bureau's investigator. He also stated that "with hindsight" he would have handled this portion of the transaction differently.

LEGAL CONCLUSIONS

First Cause for Discipline

1. Business and Professions Code section 10176, subdivision (a),⁴ provides a real estate salesperson's license may be disciplined for "Making any substantial misrepresentation," or pursuant to subdivision (i), for "Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing." Pursuant to Business and Professions Code section 10176, subdivision

⁴ All references are to the Business and Professions Code unless otherwise indicated.

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(a), and section 1076, subdivision (g), cause exists to discipline Respondent's real estate sales license by reason of the matters set forth in Findings 4 through 12, and 16.

2. Business and Professions Code section 10177, subdivision (g),⁵ provides a real estate salesperson's license may be disciplined for "Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license," and pursuant to subdivision (j), when a licensee has "Engaged in any other conduct, for the same or a different character than specified in this section, that constitutes fraud or dishonest dealing." Pursuant to Business and Professions Code section 10177, subdivision (g), and section 1077, subdivision (g), cause exists to discipline Respondent's real estate sales license by reason of the matters set forth in Findings 4 through 12, and 16.

3. Respondent was forthcoming and cooperative with the Bureau's investigation and acknowledges that "with hindsight" he should have handled the request for reimbursement of the cost of the sewer lateral differently. And the facts support the conclusion that respondent did not intend to personally benefit financially from his actions, as he actually sought less in reimbursement through the real estate proceedings than he had paid to Le, the seller, for the cost of the work. At the same time, respondent's characterization that he merely "updated" the cashier's check, the invoice and the compliance certificate is naïve and more probably shows a lack of understanding of a realtor's responsibilities and duties to his client and to third parties.

When Wells Fargo approved the short sale, it was with the condition that no funds would be paid to the buyer or the seller through escrow. Even though respondent did inform the buyer of this expense, Wells Fargo was informed only after the item was questioned when it appeared on the closing statement. By changing the names and dates on each document, respondent created the impression that he had been the one to first incur the costs, not his client, and that they were incurred at a later date, rather than when work was performed. None of this was apparent to any third party looking at the documents. It resulted in an internal bank fraud investigation that could have compromised respondent's client. And it appears this was done in order to permit reimbursement of an expense that would have been excluded, based on the original short sale terms and conditions. While this would not have directly benefited respondent, his actions nonetheless were misleading to the bank, whose approval was necessary for the sale to close.

The documents at issue here – a cashier's check, an invoice and a compliance certificate – are not documents that can be "updated" for any purpose. When changed they lose all of their integrity. This understanding is fundamental to the conduct of the business of real estate, and respondent's willingness to falsify them for any reason, makes license revocation necessary for the protection of the public.

4. Business and Professions Code section 10106 provides that in a disciplinary proceeding before the Bureau, "... the commissioner may request the administrative law

⁵ All references are to the Business and Professions Code unless otherwise indicated.

judge to direct a licensee found to have committed a violation . . . to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

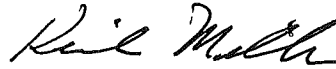
5. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee’s subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. None of these issues were implicated by the evidence.

ORDER

1. All licenses and licensing rights of respondent Leonard D. Sargent under the Real Estate Code are revoked.

2. Respondent shall pay the Bureau its costs of investigation and enforcement of this matter in the amount of \$3,329. Respondent may make payments in an installment plan approved by the Bureau.

DATED: August 25, 2014



KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings