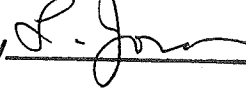


FILED

JUN 24 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order)
Issued to:)
)
LYDIA I. CANDILA,)
)
Respondent.)
_____)

NO. H-11657 SF

OAH NO. 2014040210

DECISION

The Proposed Decision dated June 12, 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.

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

IT IS SO ORDERED JUN 20 2014

REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain
Order Issued to:

LYDIA I. CANDILA,

Respondent.

Case. No H-11657 SF

OAH No. 2014040210

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on May 14, 2014, in Oakland, California.

Complainant Jeffrey Mason, Chief Deputy Real Estate Commissioner of the Bureau of Real Estate (Bureau), was represented by Truly Sughrue, Counsel.

Respondent Lydia I. Candila was present and was represented by John F. Klopfenstein, Attorney at Law.

The matter was submitted for decision on May 14, 2014.

FACTUAL FINDINGS

1. Complainant Jeffrey Mason issued the Order to Desist and Refrain in his official capacity as Chief Deputy Real Estate Commissioner (Commissioner) of the Bureau of Real Estate (Bureau).
2. At hearing, the documentary evidence and testimony of Maribel A. Felix Esparza established the facts set forth in Factual Findings 3 through 5.
3. Effective November 8, 2007, the real estate license of respondent Lydia I. Candila was revoked in case H-9722 SF. Respondent has not been licensed by the Bureau in any capacity since November 8, 2007.
4. On February 18, 2014, the Commissioner issued a Desist and Refrain Order to respondent after it determined that she engaged in acts constituting violations of the Business

and Professions Code and title 10 of the California Code of Regulations. Respondent requested a hearing, and this hearing followed.

5. In March 2011, respondent solicited the business of Maribel A. Felix Esparza, who wished to secure a modification of her loan secured by real property located at 2140 Oakwood Drive, East Palo Alto, California.¹ Respondent agreed to work on behalf of Esparza and perform the services necessary to obtain a modification of Esparza's loan. Respondent requested and collected an advance fee from Esparza in the amount of \$3,000 for her services. Respondent failed to comply with the requirements set forth in Business and Professions Code² section 10085 and California Code of Regulations, title 10, section 2970, which govern the use of advance fee agreements.

Esparza provided respondent with financial documentation in order to secure the loan modification. Respondent met with Esparza on numerous occasions and represented that she was working on Esparza's loan modification. Esparza believed respondent. Respondent appears to have started the application process but never completed it. Esparza's loan was never modified. After Esparza could no longer afford her monthly mortgage payments, she ultimately lost her house.

Respondent's evidence

6. Respondent denies that she acted in the capacity of a real estate broker in connection with the assistance she provided to Esparza. Instead, she maintains that at the time of the incidents described in Factual Finding 5, she worked under the supervision of John S. Morken, a real estate attorney.³ She claims that Morken was in charge of Esparza's loan modification, and that her role was simply to perform clerical duties, gather financial documents from Esparza, and help with translation, as Esparza's native language is Spanish. Respondent also claims that she gave the \$3,000 that she received from Esparza to Morken as payment for his legal fees. Respondent's testimony lacked credibility and candor.

LEGAL CONCLUSIONS

1. Where an individual engages in activities in violation of licensing laws or the bureau's regulations, the Commissioner is authorized to issue an order directing the individual to desist and refrain from such activities. (§ 10086, subd. (a).)

¹ Although it is not pertinent to the instant action, it is noted that Esparza held title to her house with her brother.

² All further references are to the Business and Professions Code unless otherwise indicated.

³ In 2012, Morken was disbarred.

2. Section 10130 makes it unlawful to “engage in the business of, [or] act in the capacity of” a real estate broker without first obtaining licensure from the Bureau. Pursuant to section 10131, subdivision (d), a person acts in the capacity of a real estate broker when she “solicits borrowers or lenders for, or negotiates loans . . . or performs services for borrowers or lenders . . . in connection with loans secured directly or collaterally by liens on real property” Pursuant to section 10131.2, a person acts in the capacity of a real estate broker when she charges or collects an “advance fee” in connection with any of the real estate brokerage services provided.⁴

3. By reason of the matters set forth in Factual Findings 3 and 5, respondent acted in the capacity as a real estate broker within the meaning of sections 10131, subdivision (d), and 10131.2, when she provided loan modification services on behalf of Esparza and collected an advance fee for her services. Insofar as respondent was not licensed to perform such services, her conduct violated section 10130. Accordingly, cause exists to issue an Order to Desist and Refrain pursuant to section 10086, subdivision (a).

ORDER


Pursuant to Legal Conclusion 3, respondent is ordered to:

1. Immediately desist and refrain from performing any acts within the State of California for which a real estate broker license is required. In particular, respondent is ordered to desist and refrain from soliciting borrowers and/or performing services for borrowers or lenders in connection with loans secured directly or collaterally by one or more liens on real property, unless and until she obtains a real estate broker license issued by the Bureau.
2. Immediately desist and refrain from charging, demanding, claiming, collecting and/or receiving advance fees, as that term is defined in section 10026 of the Business and Professions Code, for any of the services respondent offers to others, unless and until respondent demonstrates and provides evidence satisfactory to the Commissioner that she is properly licensed by the Bureau as a real estate broker, and that respondent:
 - (A) Has an advance fee agreement which has been submitted to the Bureau and which is in compliance with California Code of Regulations, title 10, sections 2970 and 2972;
 - (B) Has placed all previously collected advance fees into a trust account for that purpose, in compliance with Business and Professions Code section 10146;

⁴ An advance fee is a fee received for services requiring a license before such service is fully performed. (§ 10026.)

- (C) Has provided an accounting to trust fund owner-beneficiaries pursuant to California Code of Regulations, title 10, section 2972; and
 - (D) Is in compliance with California law, as amended effective as of October 11, 2009, with respect to loan modification and/or forbearance services. Under the amended law, respondent can only collect advance fees for loan modification or other mortgage loan forbearance services related to commercial loans and loans for residential properties containing five or more dwelling units.
3. Immediately desist and refrain from demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Business and Professions Code section 10026, in any form, and under any conditions, with respect to the performance of loan modification or any other form of mortgage loan forbearance services in connection with loans on residential property containing four or fewer dwelling units.

DATED: June 12, 2014



DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings