

**FILED**

**JUN 01 2016**

**BUREAU OF REAL ESTATE**

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	CalBRE No. H-11901 SF
	)	
JOE L VANNI,	)	OAH No. 2015120051
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated APRIL 27, 2016, 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 correction is made:

Findings, Page 8, Paragraph 2: Shall be stricken from the Order.

This Decision shall become effective at 12 o'clock noon on JUN 22 2016.

IT IS SO ORDERED 5/31/2016.

REAL ESTATE COMMISSIONER




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WAYNE BELL

BEFORE THE  
BUREAU OF REAL ESTATE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JOE L. VANNI,

Respondent.

Case No. H-11901 SF

OAH No. 2015120051

**PROPOSED DECISION**

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on March 28, 2016, in Oakland, California.

Annette E. Ferrante, Real Estate Counsel, represented complainant Robin S. Tanner.

Respondent Joe L. Vanni was present and represented himself at hearing.

The matter was submitted on March 28, 2016.

**FACTUAL FINDINGS**

1. Respondent Joe L. Vanni is licensed and has licensing rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate broker with the Bureau of Real Estate (bureau). Respondent's license is current and will expire on July 29, 2016, unless renewed. Respondent was issued a mortgage loan originator license endorsement on November 30, 2010.

2. Complainant Robin S. Tanner, acting in her official capacity as a Supervising Special Investigator II, filed an accusation against respondent. The accusation alleges that respondent failed to properly designate a bank account as a trust account, commingled his personal funds with trust funds in that bank account, permitted an unlicensed individual to appear as a signatory on that bank account, failed to maintain accurate and complete separate beneficiary records of trust funds, and made advance monthly installment payments with his personal funds without providing notice to the beneficiaries.

### *Background*

3. Respondent maintains a real estate company as a licensed mortgage loan originator with the registered fictitious business names "HRF Servicing" and "HRF Mortgage." Respondent negotiated private investor loans where he solicited borrowers and originated the loans as a principal using his own funds in connection with loans secured directly or collaterally by liens on real property. Subsequently, he sold some or all of his interest in these loans to private lenders.

4. During 2013, respondent serviced 41 loans for 29 investors, collecting payments to service the loans totaling approximately \$1.3 million. In a prior audit of respondent's business activities and records, the bureau found violations of the Real Estate Law. Respondent's real estate broker license was suspended for 20 days. As a condition of the suspension, respondent was subject to a follow-up audit to determine if he had corrected the violations.

### *The follow-up audit*

5. On November 19, 2014, bureau auditor Suzie Hsueh initiated a follow-up audit of respondent's business activities and records for the period of December 1, 2013 through October 31, 2014 (the follow-up audit).

6. During the follow-up audit period, respondent accepted or received funds in trust and made disbursements of trust funds. Trust funds accepted or received by respondent were deposited into a bank account maintained by respondent at Community Bank of the Bay, entitled "Joe L. Vanni REB dba HRF Servicing Trust Account" (Trust Account). Respondent used this account for loan servicing activities. Deposits included interest and late payments collected from borrowers. Disbursements included payments to lenders. Respondent was responsible for properly accounting for all trust funds received and disbursed.

7. Respondent also had a separate bank account at Community Bank of the Bay, in an account entitled "HRF Mortgage Inc." (Bank Account). Respondent used this as an operating account for loan funding and payoff activities only, not for receiving or disbursing trust funds.

### *Trust Fund Account*

8. The follow-up audit found that respondent deposited trust funds into the Bank Account and failed to properly designate the Bank Account as a trust account in the name of respondent, as trustee. On August 26, 2014, a title company wired \$264,687.38, into the Bank Account to pay off a loan (Camelback loan). This amount remained in the Bank Account until it was disbursed on September 1, 2014. On September 16, 2014, another title company wired \$264,031.43, into the Bank Account to pay off another loan (Williams loan). This amount was disbursed on September 19, 2014. In effect, respondent used the Bank

Account to receive trust funds. Complainant argues that even though respondent used the Bank Account only as an operating account for his mortgage company, when the trust funds were deposited into the Bank Account it should have been redesignated as a trust account.

Respondent credibly testified that it was an error when the title companies wired the funds into the Bank Account instead of the Trust Account. Also, after discovering that the funds had been deposited into the Bank Account, checks were immediately issued to the investors and entries were made in the separate beneficiary record for the Trust Account. Respondent has taken steps to insure that all wire instructions to the title companies have the correct account number for the Trust Account.

The audit finding is sustained. Respondent negligently allowed trust funds to be deposited into the Bank Account and not the Trust Account. However, these limited and unintentional transactions did not require respondent to convert the Bank Account into a separate trust account.

#### *Commingling of Trust Funds*

9. The follow-up audit found that respondent commingled personal funds with trust funds in the Bank Account.

The audit finding is sustained. Respondent was negligent in allowing the commingling of trust funds (proceeds from the two wire transfers) with his personal funds in the Bank Account.

#### *Maintaining Separate Records*

10. The follow-up audit found that respondent failed to maintain an accurate and completely separate beneficiary record of the trust funds held in the Trust Account. Specifically, the separate record for the Trust Account was not in chronological sequence and did not provide any information about the daily account balance. There was no detailed information about monthly payments and disbursements in the form of advances to lenders.

Prior to the follow-up audit, respondent believed that his records contained the required information. Respondent has since changed his practices to conform to the requirements of the Real Estate Law.

The audit finding is sustained. Respondent failed to maintain accurate and completely separate beneficiary records of trust funds held in the Trust Account.

### *Unauthorized Individual's Access to Trust Funds*

11. The audit found that respondent allowed an unauthorized individual, his wife Virginia A. Vanni, to be a signatory on the Bank Account and allowed her to have access to withdraw trust funds. Virginia Vanni is not licensed under the Real Estate Law nor is she bonded in an amount equal to the maximum amount of the trust funds to which she had access.

Respondent states that Virginia Vanni was an authorized signatory on the Bank Account as an officer of the mortgage company. The Bank Account was the company's operating account. When the trust funds were mistakenly wired to the operating account, this allowed her to have access to the trust funds. As a result of the follow-up audit, respondent has taken steps to ensure that no trust funds will be deposited into the Bank Account. Therefore, there would be no requirement that his wife be licensed or bonded, as it would be proper for her to remain as a signatory on the company's operating account, as long as no trust funds are deposited into the Bank Account.

The audit finding is sustained in that respondent negligently allowed an unlicensed individual access to withdraw trust funds as a signatory on the Bank Account. There was no allegation or finding that Virginia Vanni misused any trust funds.

### *Use of Personal Funds to Advance Investors Payments*

12. The audit found that respondent used personal funds to advance monthly installment payments to investors. Also, respondent failed to notify the investors, within 10 days, with specific information about the date and amount of payment, the name of the person to whom the payment was made, the source of funds, and the reason for making the payment. In particular, complainant contends that respondent, within 10 days of sending the payments, should have informed the investors that respondent had made the payments out of his own funds, and not with the borrowers' funds. According to the auditor, she has rarely seen this type of violation of the Real Estate Law.

Respondent states that it was his policy to pay investors by the 25th of the month. However, sometimes payments from the borrowers would not reach his office until after the 30th of the month. So, he would pay the monthly payments out of his own funds to insure that the investors received their payments by the 25th of the month. Within a few days, the payments from the borrowers would arrive and be deposited into the account. He considered the investors to be his personal friends and wanted them to receive their payments on time. He was not advancing funds to protect the security of the note or the contract being serviced. There was no harm to the investors. Respondent believed that since the payments were received from the borrowers within a few days and before the expiration of the 10-day period, then a notice to the investors was not necessary. Now, respondent understands that he was in error. He no longer makes advance payments to investors and he pays the investors on the 30th of the month after receiving payments from the borrowers.

The audit finding is sustained. Although respondent made the payments with his own money and received the borrowers' payments within 10 days, he was still required to send each investor a notice that he had made advance payments using his own funds. Respondent failed to do so.

#### *Respondent's evidence*

13. Respondent was originally licensed as a real estate salesperson in 1978. He obtained his broker's license on August 23, 1985.

14. Respondent acknowledged that he is responsible for the operations of his business and takes responsibility for all compliance issues. Respondent has corrected each violation identified in the follow-up audit report and changed his practices as needed.

#### *Costs*

15. The bureau certifies that the following costs were incurred in connection with the investigation and enforcement of this accusation. Real Estate Counsel's costs in the amount of \$845.50 and investigators' costs in the amount of \$611.50, for total costs incurred of \$1,457. Complainant's costs are found to be reasonable.

### LEGAL CONCLUSIONS

1. Complainant has the burden of proof to show by clear and convincing evidence to a reasonable certainty that respondent's license should be suspended or revoked. (See *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-6.)

2. Under Business and Professions Code section 10177, subdivision (d),<sup>1</sup> the Real Estate Commissioner may suspend or revoke the license of a real estate licensee who has "willfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law . . ." (subd. (d)), or demonstrated negligence in performing an act for which he is required to hold a license (subd. (g).)

#### *Trust Fund Account*

3. Section 10145 provides for the handling of trust funds. A real estate broker who accepts funds belonging to others in connection with a real estate transaction must deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in

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<sup>1</sup> All statutory references are to the Business and Professions Code, unless otherwise noted.

a bank. All funds deposited by the broker in a trust fund account must be maintained there until disbursed by the broker in accordance with the instructions from the person entitled to the funds. (§ 10145, subd. (a).)

4. Compliance with section 10145 requires that the real estate broker place trust funds into a trust fund account in the name of the broker or the broker's fictitious business name. (Cal. Code Regs. tit. 10 § 2832.)

Cause exists to suspend or revoke respondent's real estate broker license, pursuant to section 10145, and California Code of Regulations, title 10, section 2832, in conjunction with section 10177, subdivisions (d) and (g), as set forth in Factual Findings 5 through 8 and Legal Conclusions 2 through 4.

#### *Commingling of Trust Funds*

5. Under section 10176, subdivision (e), the Real Estate Commissioner may suspend or revoke the license of a real estate licensee who commingles with his own money the money of others which is received and held by him. (§ 10176, subd. (e)).

Cause exists to suspend or revoke respondent's real estate broker license, pursuant to section 10176, subdivision (e), in conjunction with section 10177, subdivisions (d) and (g), as set forth in Factual Findings 5 through 9 and Legal Conclusions 2 and 5.

#### *Maintaining Separate Records*

6. A real estate broker shall for each beneficiary or transaction have a separate record of accounting for all funds which have been deposited to the broker's trust fund account, including the date and amount of deposit, check number, and amount of each related disbursement, amount of interest earned, and balance after posting transactions on any date. (§ 10145, subd. (g); Cal. Code Regs. tit. 10 § 2831.1.)

Cause exists to suspend or revoke respondent's real estate broker license, pursuant to section 10145, subdivision (g), and California Code of Regulations, title 10, section 2831.1, in conjunction with section 10177, subdivisions (d) and (g), as set forth in Factual Findings 5 through 7 and 10, and Legal Conclusion 2.

#### *Unauthorized Individual Withdrawing Trust Funds*

7. Usually, only a broker can make a withdrawal from a trust account. One exception is that an "unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time" may make a trust account withdrawal. (Cal. Code Regs. tit. 10 § 2834.)

Cause exists to suspend or revoke respondent's real estate broker license, pursuant to California Code of Regulations, title 10, section 2834, in conjunction with section 10177, subdivisions (d) and (g), as set forth in Factual Finding 11 and Legal Conclusion 2.

*Use of Personal Funds to Advance Investors' Payments*

8. Section 10233.1 provides:

If a real estate broker in servicing a real property sales contract or a promissory note secured directly or collaterally by a lien on real property for the mortgagee, beneficiary, or owner of the note or contract, causes funds other than funds received from the obligor of the note or contract to be applied toward a payment to protect the security of the note or contract being serviced, including the payment of debt service on an obligation secured by the same real property having priority over the mortgage or deed of trust securing the promissory note that the broker is servicing, the broker shall, not later than 10 days after making any such payment, given written notice to the mortgagee, beneficiary, owner of the date and amount of payment, the name of the person to whom payment was made, the source of funds, and the reason for making the payment.

Cause exists to suspend or revoke respondent's real estate broker license, pursuant to section 10233.1, in conjunction with section 10177, subdivisions (d) and (g), by reason of the matters as set forth in Factual Findings 12 and Legal Conclusion 2.

*Disciplinary Considerations*

9. Cause for license discipline having been established, the issue is the level of discipline to impose. The purpose of license discipline is not to punish the licensee, but to protect the public. The follow-up audit revealed several violations of the laws that govern the handling and the accounting for receipts and disbursements of trust funds. Many of these requirements are of a minor, technical nature, but they are nonetheless important. These requirements are in place for the protection of the public, and uniform compliance by all licensees is necessary for the bureau to regulate the business of real estate in California. The follow-up audit served a useful purpose in pointing out to respondent his shortcomings in his practices. However, no intentional misconduct was found.

Respondent admitted all of the violations and corrected the deficits to his practices. Also, it was not shown that any clients were harmed by these deviations and omissions. Under the circumstances, the public interest will be adequately protected by a stayed 60-day suspension subject to certain conditions, including requiring respondent to take an educational course in trust fund accounting and handling.



## Costs

10. Section 10106 provides that a respondent may be ordered to pay the bureau “a sum not to exceed the reasonable costs of the investigation and enforcement of the case.” The bureau’s certification of the actual costs constitutes prima facie evidence of the reasonable costs of investigation and enforcement. As set forth in Finding 15, it was established that complainant has incurred \$1,457, in actual costs in connection with the investigation and enforcement of this matter.

11. The case of *Zuckerman v. Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth certain standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee’s good faith belief in the merits of his 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.

Respondent objects contending that he has “paid for two audits and one investigation,” and these type of violations did not require an investigation and hearing. However, applying the *Zuckerman* factors, the evidence does not support reducing the board’s reasonable costs of investigation and enforcement in the amount of \$1,457.

## ORDER

All licenses and licensing rights of respondent Joe L. Vanni under the Real Estate Law are suspended for a period of 60 days from the effective date of this decision; provided, however, that the suspension shall be stayed for one year upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
2. The Commissioner may, if a final subsequent determination is made, after hearing or upon stipulation, that cause for disciplinary action occurred during the term of the suspension provided for herein, vacate and set aside the stay order including any further stay imposed pursuant to section 10175.2. Should no order vacating the stay be made pursuant to this condition or condition (c), below, the stay imposed herein shall become permanent.

3. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.
4. No later than sixty (60) days from the effective date of this Decision, respondent shall submit proof satisfactory to the Commissioner of Real Estate that he has taken and successfully completed the continuing education course on trust fund accounting and handling as specified in Business and Professions Code section 10170.5, subdivision (a). Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within sixty (60) days prior to the effective date of the Decision in this matter.
5. Respondent shall pay the bureau's costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106, in the amount of \$1,457.

Respondent shall be permitted to pay these costs in a payment plan approved by the bureau. Respondent's failure to make payments in accordance with any formal agreement entered into with the bureau or pursuant to any Decision by the bureau shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: April 27, 2016

DocuSigned by:  
*Regina Brown*  
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REGINA BROWN  
Administrative Law Judge  
Office of Administrative Hearings