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JUN 26 2019

DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
THE AZARI GROUP REAL ESTATE, INC.,)	DRE Case No. H-11965 SF
and MARIO ANTONIO BANUELO,)	OAH Case No. 2017020321
)	
Respondents.)	
_____)	

DECISION ON REMAND

On October 16, 2017, and October 17, 2017, this matter came on for hearing before Juliet E. Cox, Administrative Law Judge (“ALJ”), Office of Administrative Hearings, State of California, in Oakland, California.

On November 16, 2017, the ALJ issued a Proposed Decision (“the Proposed Decision”) which rendered a Decision by which the real estate broker corporation license of The Azari Group Real Estate, Inc. (“AZARI GROUP”), was revoked.

On December 21, 2017, The Real Estate Commissioner (“the Commissioner”) of the Department of Real Estate¹ of the State of California (“Department”) adopted the Proposed Decision, to become effective on January 17, 2018.

¹ Effective July 1, 2018, the Bureau of Real Estate became the Department of Real Estate. (Bus. & Prof. Code § 10005.)

1 On January 2, 2018, AZARI GROUP filed with the Department a Request for
2 Stay of Decision for Purpose of Filing a Petition for Reconsideration.

3 On January 4, 2018, the Commissioner issued an Order Staying Effective Date,
4 moving the effective date of decision to February 16, 2018.

5 On January 16, 2018, AZARI GROUP filed with the Department a Petition for
6 Reconsideration. The Department denied AZARI GROUP's Petition for Reconsideration.

7 On April 20, 2018, AZARI GROUP filed a Petition For Writ of Mandate from the
8 Department's Decision in the Superior Court of California, County of Sacramento, Case No. 34-
9 2018-80002870 ("Superior Court").

10 On March 12, 2019, the Superior Court issued its Ruling on Submitted Matter Re:
11 Petition For Writ of Mandate, granting the Petition for Writ of Mandate based upon the evidence
12 failing to establish willful disregard or violation of law by AZARI GROUP for operating without
13 a designated officer.

14 On April 11, 2019, the Superior Court filed a Judgment by Court Order Granting
15 Petition for Writ of Mandate, directing the Department to set aside and reconsider its Decision of
16 December 21, 2017, in the Matter of The Azari Group Real Estate, Inc., et al., in light of the
17 March 12, 2019 Ruling on Submitted Matter Re: Petition For Writ of Mandate.

18 Pursuant to Section 11517 (c) (2) (E) of the Government Code of the State of
19 California, AZARI GROUP was served with notice that the Decision of the Commissioner dated
20 December 21, 2017, was set aside. AZARI GROUP was notified that the case would be decided
21 by the Department upon the record, the transcript of the proceedings held on October 16, 2017,
22 and October 17, 2017, and upon written argument offered by Respondent and Complainant.

23 AZARI GROUP submitted written argument on May 23, 2019. Complainant
24 submitted written argument on June 7, 2019.

25 I have given careful consideration to the record in this case, including March 12,
26 2019 Ruling on Submitted Matter Re: Petition For Writ of Mandate, the transcript of the

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1 proceedings held on October 16, 2017, and October 17, 2017, and written arguments submitted
2 by Respondent and Complaint.

3 In accordance with the, Order of the Superior Court, the Department makes the
4 following Decision in this matter.²

5 **FACTUAL FINDINGS**

6 The Factual Findings of the Proposed Decision are adopted as part of this
7 Decision.³

8 **LEGAL CONCLUSIONS**

9 The Legal Conclusions of the Proposed Decision are adopted as part of this
10 Decision with the exception of the following:⁴

11 "7. A corporate real estate broker may designate one of the corporation's officers
12 as the corporation's broker. (Bus. & Prof. Code, § 10211.) The corporation may not act as a real
13 estate broker if it does not have such a person in office. (Cal. Code Regs., tit. 10, § 2740.)
14 Collecting rent for a client is an activity requiring licensure as a real estate broker. (Bus. & Prof.
15 Code, §10131, subd. (b).)

16 Business and Professions Code section 10177, subdivision (d), establishes that the
17 Real Estate Commissioner may suspend or revoke the license of a real estate licensee "who
18 has...[w]illfully disregarded or violated the Real Estate Law...or the rules and regulations of the
19 Real Estate Law..." (Emphasis added.)

20 The concept of "willful" is given broad meaning in the realm of administrative
21 licensure disciplinary proceedings. "Willful" does not imply a malicious intent to do wrong or a
22

23 _____
24 ² The Decision and Order of December 21, 2017 pertaining to Respondent Mario Antonio
Banuelos remains unchanged.

25 ³ As noted by the Superior Court, AZARI GROUP does not contend the ALJ erred in the factual
findings that serve the basis for the subject discipline. (March 12, 2019 Ruling on Submitted Matter Re: Petition for
Writ of Mandate, p. 1, fn. 1.)

26 ⁴ The Department's Decision incorporates the ruling by the Superior Court, wherein it was
found that "absent a clear finding that TAG knew Mr. Banuelos had removed himself as Designated Officer but yet
27 continued to engage in real estate business despite this particular knowledge, the imposition of discipline pursuant to
Section 10177, on this record, constitutes a prejudicial abuse of discretion." (March 12, 2019 Ruling on Submitted
Matter Re: Petition for Writ of Mandate, p. 5.)

consciousness for malfeasance on the part of a licensee to violate a rule, statute or standard of due care. And, the term “willful”...does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done was done or omitted intentionally. (*Suman v. BMW of North America, Inc.* (1994) 23 Cal.App.4th 1, 12; *Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 713; *Milner v. Fox* (1980) 102 Cal.App.3d 567, 573-575, fn. 9; and *Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639.) This “does not require an intent to violate the law, only an intent to engage in the act or conduct prohibited by the statute is required.” (*Milner v. Fox, supra*, 102 Cal.App.3d at p. 574, fn. 9.) A party who acts “voluntarily with an awareness of the nature of his conduct” does so “willfully”. (*Id.*)

As stated in Findings 45 through 47, however, the evidence failed to establish sufficiently and clearly that TAG was aware it was doing business without a Designated Officer. Given the absence of such evidence and clarity thereof, TAG’s conduct does not rise to the level of a “willful” disregard or violation of law, rules or regulations sufficient to form the basis for a finding of misconduct pursuant to section 10177. Complainant did not show cause of discipline on this basis against TAG’s real estate broker corporation license.”

“11. The purpose of an administrative adjudication proceeding that contemplates the revocation or suspension of a professional or occupational license is not to punish the individual. The purpose of the agency action that results from the administrative adjudication proceeding is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

The Department’s institution of disciplinary action through an accusation is to “protect the public not only from [a] conniving real estate [licensee], but also from the uninformed, negligent, or unknowledgeable [real estate licensee]...” (*Handeland v. Department of Real Estate* (1995) 58 Cal.App.3d 513, 518.)

Trust fund violations are serious and compel Department scrutiny. The audit revealed that Respondents failed to adhere to basic procedures for handling client funds that are

1 well-known and required of all licensees. Most concerning is Respondents transfer of \$43,250 of
2 trust funds from the trust account into AZARI GROUP's general business account which reduced
3 the balance of funds to an amount less than the existing aggregate trust fund liability of the
4 broker to all owners of the funds without the written consent of the owners. Further, Respondents
5 failed to deposit client funds into a trust account, commingled client funds with broker's own
6 funds, failed to maintain proper records, and failed to reconcile its general business account
7 which held trust funds at least monthly. Respondents' wrongful acts and omissions did not
8 constitute simple mistakes, inconsequential errors or discrepancies. Rather, Respondents
9 unlawful conduct constituted substantial departures from the standards expected of a licensed
10 real estate broker, who is engaged in property management activities.

11 No evidence demonstrated any efforts by Azari, or anyone else at TAG, to correct
12 the organizational failures that have allowed Azari to continue operating TAG without
13 meaningful supervision by any licensed real estate broker.

14 When considering the Factual Findings and Legal Conclusions as a whole,
15 revocation of TAG's corporate real estate broker's license is necessary to protect the public."

16 **ORDER**

17 WHEREFORE, THE FOLLOWING ORDER is hereby made:

18 All licenses and licensing rights of Respondent The Azari Real Estate Group, Inc.,
19 under the Real Estate Law are revoked.

20 Respondent The Azari Real Estate Group, Inc., shall reimburse the Department
21 \$9,908.48 toward its reasonable investigation and prosecution costs within 30 days following the
22 Department's final decision in this matter.

23 This Decision shall become effective at 12 o'clock noon on JUL 17 2019.

24 IT IS SO ORDERED June 26, 2019.

25 DANIEL J. SANDRI
26 ACTING REAL ESTATE COMMISSIONER

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