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OCT 31 1988

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
James B. Oron

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In the Matter of the Accusation of)
)
KISMET REAL ESTATE INVESTMENTS,)
INC., et al.,)
)
)
Respondent.)

NO. H- 22880 LA

DECISION

The Proposed Decision dated October 12, 1988, of Randolph Brendia, Regional Manager, Department of Real Estate, 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 December 1, 1988.

IT IS SO ORDERED October 19, 1988.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By: *John R. Liberator*
JOHN R. LIBERATOR
Chief Deputy Commissioner

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-22880 LA
)
KISMET REAL ESTATE INVESTMENTS,)
INC., a California corporation;)
and WILLARD MICHLIN, individually)
and as designated officer of)
Kismet Real Estate Investments,)
Inc.)
)
Respondents.)
)
)
)

PROPOSED DECISION

This matter was presided over as an uncontested case by Randolph Brendia, Regional Manager, Department of Real Estate, as the designee of the Real Estate Commissioner, in Los Angeles, California on October 12, 1988.

Complainant was represented by Timothy L. Newlove, Counsel. Respondents were represented by their counsel, John F. Hertz.

The matter was submitted upon the written Stipulation of the parties, and pursuant thereto, the following Decision is proposed, certified and recommended for adoption.

FINDINGS OF FACT

I

The complainant, Randolph Brendia, a Deputy Real Estate Commissioner of the State of California, made the Accusation in his official capacity.

II

Each respondent is now licensed or has license rights, or both, under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter referred to as the "Code").

III

At all times mentioned herein, respondent KISMET REAL ESTATE INVESTMENTS, INC. (hereinafter respondent "KISMET") was and now is licensed by the California Department of Real Estate (hereinafter "Department") as a corporate real estate broker.

IV

At all times material herein, respondent WILLARD MICHLIN (hereinafter "MICHLIN") was and now is licensed by the Department as a real estate broker in his individual capacity. At all times mentioned herein from January 27, 1986 to the present, respondent MICHLIN was the designated officer of respondent KISMET.

V

All further references to respondents KISMET and MICHLIN, and each of them, shall be deemed to refer to, in addition to said respondents, the officers, directors, employees, agents, and real estate licensees employed by or associated with said respondents, who at all times mentioned herein were engaged in the furtherance of the business or operations of said respondents, and each of them, and who were acting in the course and scope of their authority and employment.

VI

In or about September, 1986, the Department performed an audit of the accounting and other records of respondent KISMET (hereinafter "the Audit"). The Audit covered the time period from January 1, 1986 to and including August 15, 1986. Unless otherwise indicated, the relevant time period in this Proposed Decision shall be the same.

VII

At all times material herein, respondent KISMET acted in the capacity of a mortgage loan broker by soliciting borrowers and lenders, and negotiating and servicing loans secured directly by liens on real property within the meaning of Section 10131(d) of the Code, all for or in expectation of compensation. At all times material in the course of or incidental to said mortgage loan brokerage business, respondent KISMET also acted or assumed to act as escrow holder or agent for the purpose of effecting mortgage loan transactions, and thereby acted or assumed to act under the exemption from the provision of the Escrow Law as provided by Section 17006(d) of the California Financial Code.

VIII

At all times material herein, in connection with the above-described mortgage loan and escrow activities, respondent KISMET received funds in trust (hereinafter "trust funds") from or on behalf of lenders and borrowers and thereafter made disbursements of said trust funds. At all times material herein, respondent KISMET maintained the following described trust accounts as part of its mortgage loan brokerage and escrow business.

TITLE OF ACCOUNT

BANK

Kismet Real Estate Escrow Account
Account No. [REDACTED]
(hereinafter "Trust Account No. 1")

Westside Savings and
Loan Association
Westwood, California

Willard Michlin Escrow Account for
Kismet Real Estate Investments, Inc.
Account No. [REDACTED]
(hereinafter "Trust Account No. 2")

First Los Angeles Bank
Los Angeles, California

IX

A. The Audit found that at all times material herein, respondent KISMET disbursed, caused to be disbursed, or permitted the disbursement of funds from Trust Account No. 1 for purposes not authorized by, and without the written consent of, each person for whom the funds were held in trust in said account; the said unauthorized disbursement of funds had reduced, as of August 15, 1986, the balance of funds in Trust Account No. 1 to an amount which was \$1,520.41 less than the then-existing aggregate trust fund liability of respondent KISMET to all owners of said funds; of the said \$1,520.41 shortage, \$1,085.49 represented interest earned from said Trust Account No. 1 and not disbursed by respondent KISMET to the owners of trust funds in said account. Respondent KISMET subsequently returned said \$1,085.49 in interest to respondent's clients.

B. Respondents maintain that oral authority and consent was had from each person for whom funds were held in such account, for respondent KISMET to place such funds in an interest-bearing account, and generally to retain the interest; to persons who did not agree that respondent KISMET retain interest, respondent KISMET regularly allocated and paid interest in the amounts properly due; such account was closed on or about August 4, 1986; after the Audit, respondent KISMET allocated and paid interest to its clients which previously had specifically agreed that respondent KISMET retain such interest.

X

A. The Audit found that at all times material herein, respondent KISMET disbursed, caused to be disbursed, or permitted

the disbursement of funds from Trust Account No. 2 for purposes not authorized by, and without the written consent of, each person for whom the funds were held in trust in said account; the said unauthorized disbursements of funds by respondent KISMET had reduced, as of August 15, 1986, the balance of funds in Trust Account No. 2 to an amount which was approximately \$1,635.72 less than the then-existing aggregate trust fund liability of respondent KISMET to all owners of said funds.

B. Respondents maintain that no disbursement was made without the authority and oral consent of each person for whom funds were held in such account; specifically, the stated shortage was due to one such person who, without the knowledge of respondent KISMET, failed to forward agreed funds when promised, so that respondent KISMET upon such person's business ignorantly wrote checks exceeding the balance, which was promptly discovered and rectified.

XI

A. The Audit found that at all times material herein, respondent KISMET failed to designate Trust Account No. 1 and Trust Account No. 2 as "trust accounts" on the signature cards of said accounts, and also failed to maintain said accounts in the name of KISMET REAL ESTATE INVESTMENTS, INC., as trustee thereof.

B. Respondents observe that both accounts were designated "escrow accounts", and that the name "KISMET REAL ESTATE" appeared in the title of each.

XII

A. The Audit found that at all times material herein, respondent KISMET failed to maintain a complete record of trust funds received into and disbursed from Trust Accounts Nos. 1 and 2 by not maintaining daily balance of the columnar records for said accounts.

B. Respondents maintain that respondent KISMET kept a complete record of such funds; upon any transaction for the account of any person for whom such funds were held, the transaction was entered in columns according to the name of such person or account, and a new balance struck.

XIII

A. The Audit found that all times material herein, respondent KISMET failed to maintain an adequate separate record for each beneficiary or transaction by not keeping said separate records in a columnar format and not running a daily balance in said records.

B. Respondents maintain that the records of respondent KISMET were kept in columnar format and that a new balance was entered for each beneficiary upon each transaction for the account thereof.

XIV

A. The Audit found that at all times material herein, respondent KISMET maintained Trust Account Nos. 1 and 2 as interest-bearing accounts without the written authorization or approval of each person from whom funds were held in trust in said accounts. On or about August 4, 1986, respondent KISMET caused Trust Account No. 1 to be closed. From January 1, 1986 to and including August 4, 1986, Trust Account No. 1 generated \$1,085.49 in interest.

B. Respondents maintain that such funds were held so as to bear interest with the specific oral approval of each person for whom such funds were held in such accounts.

XV

According to respondents, respondent KISMET now designates accounts in which respondent receives and disburses trust funds as "trust accounts"; maintains said trust accounts in the name of KISMET REAL ESTATE INVESTMENTS, INC.; does not maintain said trust accounts as interest-bearing accounts; and maintains proper records of the receipt and disbursement of trust funds.

DETERMINATION OF ISSUES

I

The conduct of respondent KISMET, as described in Paragraphs IX and X hereinabove, constitutes the disbursement of trust funds from Trust Account No. 1 and Trust Account No. 2 resulting in a reduction of the balance of funds in said accounts to an amount less than the then-existing aggregate trust fund liability of respondent to all owners of the trust funds, without the prior written consent of each person who was an owner of funds in the account, in violation of Section 10145 of the Code and Section 2832.1 of Chapter 6, Title 10, of the California Code of Regulations (hereinafter the "Regulations"). Said conduct and violations are cause to suspend the real estate license and license rights of respondent KISMET under the provisions of Section 10177(d) of the Code.

II

The failure of respondent KISMET to designate Trust Accounts Nos. 1 and 2 as "trust accounts" and maintain said accounts in the name of the broker as trustee thereof, as

described in Paragraph XI hereinabove, is a violation of Regulation 2830 and constitutes grounds for suspension of the real estate license and real estate license rights of respondent KISMET under the provisions of Section 10177(d) of the Code.

III

The failure of respondent KISMET to keep a proper record of all trust funds received and disbursed, as described in Paragraph XII hereinabove, is a violation of Regulation 2831 and constitutes grounds for the suspension of the real estate license and real estate license rights of respondent KISMET under the provisions of Section 10177(d) of the Code.

IV

The failure of respondent KISMET to keep a proper separate record for each beneficiary or transaction, as described in Paragraph XIII hereinabove, is a violation of Regulation 2831.1 and constitutes grounds for the suspension of the real estate licenses and real estate license rights of respondent KISMET under the provisions of Section 10177(d) of the Code.

V

The conduct of respondent KISMET in maintaining Trust Account No. 1 and Trust Account No. 2 as interest-bearing accounts without the written permission of and without being requested to do so by the owners of trust funds in said accounts, as described in Paragraph XIV hereinabove, constitutes a violation of Section 10145 of the Code and Regulation 2830. Said conduct and violations constitute grounds for the suspension of the real estate license and license rights of respondent KISMET under the provisions of Section 10177(d) of the Code.

VI

As the designated officer of respondent KISMET, respondent MICHLIN was responsible under Section 10159.2 of the Code for the supervision of the activities of the officers and employees of said respondent for which a license is required. The acts and omissions of respondent MICHLIN, in allowing respondent KISMET to violate Sections 10145 and 10177(d) of the Code and Regulation 2830, 2831, 2831.1 and 2832.1, constitutes a failure on the part of respondent MICHLIN as the designated officer of respondent KISMET to exercise proper supervision of the activities of said corporate respondent for which a real estate license is required under Section 10159.2 of the Code, and is cause to suspend respondent MICHLIN'S real estate license and real estate license rights under 10177(h) of the Code.

VII

The violations of the Code and Regulations determined above are sufficient grounds for the suspension of the real estate license and license rights of respondents KISMET and MICHLIN. Upon all the facts and circumstances, no determination is made that such respondents, or either of them, failed their fiduciary duty or engaged in other wrongdoing.

ORDER

WHEREFORE, THE FOLLOWING ORDER IS MADE PURSUANT TO THE WRITTEN STIPULATION OF THE PARTIES.


1. The corporation real estate broker license and all license rights, under the provisions of Part 1 Division 4 of the California Business and Professions Code, of respondent KISMET REAL ESTATE INVESTMENTS, INC., are suspended for ten (10) days.

Provided, however, the 10-day suspension of the license of respondent KISMET REAL ESTATE INVESTMENTS, INC., is hereby stayed upon the condition that it shall pay to the Department of Real Estate \$750 prior to the effective date of the Decision, pursuant to the provisions of Section 10175.2 of the Code. Said payment shall be in the form of a certified or cashier's check.

2. The real estate broker license, designated officer license, and all license rights, under the provisions of Part 1 of Division 4 of the California Business and Professions Code, of respondent WILLARD MICHLIN are suspended for ten (10) days.

Provided, however, the 10-day suspension of respondent WILLARD MICHLIN'S license is hereby stayed upon the condition that he shall pay to the Department of Real Estate \$750 prior to the effective date of the Decision, pursuant to the provisions of Section 10175.2 of the Code. Said payment shall be in the form of a certified or cashier's check.

DATED: 10/12/1988


RANDOLPH BRENDIA
Regional Manager
Department of Real Estate