

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation) Case No. H-26834-LA
of:)
) OAH No. L-9610176
GERALD LOUIS LUSEAR,)
)
Respondent.)

PROPOSED DECISION [AMENDED]

On March 25, 1997, in Los Angeles, California, Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Mr. Robert Baker, Staff Counsel, represented the complainant. Respondent appeared in pro per.

Evidence was received and the matter submitted.

On April 23, 1997, the Administrative Law Judge ("ALJ") issued his Proposed Decision, which made two Determinations of Issues. By a letter dated May 2, 1997, Complainant's counsel gave the ALJ notice that Determination of Issues number 1 in the Proposed Decision found a cause for discipline not specifically pleaded in the Accusation. Upon review of the file, the ALJ determined counsel was correct, and this Amended Proposed Decision issued on May 15, 1997, making new Determinations of Issues.

FINDINGS OF FACT

1. Complainant Thomas McCrady filed the Accusation in his official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California ("the Department").

2. (A) Respondent Gerald Louis Lusear is licensed by the Department as a restricted real estate broker, holding license no. 00336365. The restricted license was issued to Respondent following the revocation of his real estate broker's license in August 1989.

(B) Respondent's broker's license was revoked after it was established that he had, among other things, failed to maintain trust account records and had allowed unauthorized persons to withdraw funds from trust accounts.

(C) Respondent's restricted license was suspended by the Department on June 25, 1996, pursuant to section 10475 of the Business and Professions Code.¹

3. On August 29, 1995, in the Superior Court, County of Los Angeles, a default judgment was entered against Respondent in the civil case entitled Shirly Hall vs. Gerald Lusear dba Vinlu Services aka Vinlue Services Escrow; Shirly Bagby; Vera S. Vinson, Estrella Financial Services Group, Inc., Los Angeles Superior Court Case no. BC112933. Said judgment assessed compensatory and punitive damages against Respondent and his co-defendant Shirly Bagby ("Bagby") in the sum of \$238,018.21.

4. (A) Respondent had employed Bagby, a former licensee, to assist him in operating a mortgage brokering business. The judgement arose from a claim by Shirly Hall ("Hall") that Respondent and Bagby had defrauded her after they obtained a loan for her of approximately \$78,000.00, which was secured by Ms. Hall's home. The loan proceeds were deposited in an escrow account controlled by Respondent. Approximately \$32,700.00 was misappropriated by Bagby and/or Respondent,² causing Ms. Hall financial harm and emotional distress.

(B) Respondent's default was taken in the lawsuit after the check used to pay his and Bagby's filing fee was returned for non-sufficient funds. Ms. Hall thereafter submitted evidence in support of her claim and the court entered a judgment against Respondent and Bagby. It was adjudged that Respondent and Bagby conspired with fraudulent intent to convert Ms. Hall's loan proceeds.

5. After the judgment was entered Ms. Hall made a claim against the Department's recovery fund because she was unable to obtain payment on the judgment from Respondent.

6. (A) At the hearing in this matter, Respondent attempted to lay blame on Bagby, his former employee. While he acknowledged he was ultimately responsible as the licensee and real estate professional, he testified Bagby had tricked him in the disbursement of some of the monies, had intercepted mail pertaining to the transaction and the lawsuit, and had otherwise caused Mrs.

¹ All statutory references shall be to the Business and Professions Code unless otherwise noted.

² This was Ms. Hall's actual loss. There was evidence Respondent and Bagby misappropriated another \$9,000.00 by loaning it to a third person without her consent, but that amount was paid back to Ms. Hall.

Bagby's losses. Ms. Hall's civil complaint and affidavit in support of the default judgment do tend to establish that Ms. Bagby was the main actor in the fraudulent transaction.

(B) However, the court record also establishes that Respondent was not completely forthcoming at the hearing in this case. While he testified about how Ms. Bagby misappropriated a check for \$7,200.00 which had been properly drawn off the escrow account, Respondent did not explain the loss of an additional \$25,000.00. Nor did he disclose that another \$9,000.00 was loaned to a third party without Ms. Hall's consent. Further, the court record refutes Respondent's claim that Ms. Bagby kept him in the dark about the transaction and the lawsuit.

7. Respondent has not satisfied any part of Ms. Hall's judgment against him.

DETERMINATION OF ISSUES

1. Cause exists to suspend or revoke Respondent's restricted real estate broker's license pursuant to section 10177.5 of the Business and Professions Code because of the entry of a civil judgment for fraud against Respondent. (Findings 3, 4(A) and 4(B).)

2. There is no mitigating evidence and substantial aggravating evidence. (Findings 2(A)-(C), 6(B) and 7.)

Discussion

Respondent asserted he was not active in the fraud perpetrated upon his client but that his former employee was to blame. Even if that claim is accepted as true, it does not exonerate him.

Respondent's contention only proves that he did not learn from the earlier revocation of his broker's license. In the prior matter, Respondent was disciplined for failing to manage trust accounts properly and for other wrongdoing. Here, his defense proves he failed to supervise his employee and failed to properly control an escrow account. As a result, his client lost over thirty thousand dollars.

While there is evidence that Ms. Bagby was the prime actor, there was significant evidence that Respondent participated in the fraud. He certainly benefitted from the transaction as he admits he received a commission on the loan. It is disturbing that while attesting that Bagby misappropriated a check for \$7,200.00,

Respondent did not explain how the other losses occurred and how \$9,000.00 was loaned to a third party without Ms. Hall's consent.

It is plain that the public can only be protected by the revocation of Respondent's restricted license.

ORDER

All licenses and licensing rights of Respondent Gerald Louis Lusear under the Real Estate Law are hereby revoked.

May 15, 1997



Joseph D. Montoya,
Administrative Law Judge