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DEC 10 1997
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By *R. Medley*

* * * * *

In the Matter of the Accusation of)

No. H-27162 LA

ROSE DUKE MARSH and
CRAIG WILLIAM CARLSON,

L-1997060136

Respondent(s).

DECISION

The Proposed Decision dated November 20, 1997,
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 December 30, 1997.

IT IS SO ORDERED

12/4/97

JIM ANTT, JR.
Real Estate Commissioner

Jim Antt, Jr.

In the Matter of the Accusation of

OAH. L-1997060136

Respondents.

1

4. At all times herein mentioned, respondent Marsh dba Victor Valley mortgage Company, engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate broker in the State of California within the meaning of section 10131(d) of the Business and Professions Code, including the operation of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly and collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance.

5. In connection with the above-described activities, respondent Marsh accepted or received funds in trust from or on behalf of borrowers and lenders, and thereafter made disposition of such funds. Respondent maintained a trust account into which she deposited certain of these funds under the name of Victor Valley Mortgage Trust Account under account number [REDACTED] at Wells Fargo Bank, Victorville, CA 92392.

6. On September 12, 1996, the Department completed a field audit examination of respondent Marsh's books and records pertaining to the mortgage loan activities described above for the period beginning January 15, 1996 and ending August 19, 1996.

7. As a result of said Audit it was determined that respondent Marsh acted in violation of the Business and Professions Code and the California Code of Regulations as follows:

(a) Failed to maintain the trust account in the name of the broker;

(b) Permitted an unlicensed person, Carlson, who was not bonded, to be an authorized signatory on the trust account.

8. Respondent Marsh, with full knowledge that Carlson was not licensed by the Department as a real estate salesperson, employed and compensated him after his license had expired to perform acts for which a real estate license is required, for another or others for or in expectation of compensation.

9. During a period of time when his license had expired, respondent Carlson negotiated the refinancing of loans of a Mark and Tina Howard, a Mike and Susan Hernandez and a Wilbert and Helen Harris, for compensation paid by Marsh.

10. The overall conduct of respondent Marsh as described in the above Findings constitutes negligence or incompetence.

11. The overall conduct of respondent Marsh described in the above Findings constitutes a failure to exercise reasonable supervision.

12. The expiration of Carlson's license resulted from the non-payment of fees. Carlson's claim that the application was sent to the wrong address and as soon as he found about the lapse he immediately rectified it is credible. It appears that no harm resulted from the temporary delay in renewal.

13. Respondent became Broker of record upon the untimely death of her husband who had been the Broker of record. She was personally unaware of Carlson's license status and the need for the trust account to be in her name. All audit violations were remedied immediately after the Audit.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

A. Respondent Marsh

1. Cause exists to suspend or revoke the real estate license of respondent pursuant to Business and Professions Code sections 10177(d) for violating the following:

A. Business and Professions Code section 10145 and 10 California Code of Regulations section 2830, by reason of Finding 7.a.

B. Business and Professions Code section 10145 and 10 California Code of Regulations section 2834, by reason of Finding 7.b.

2. Further cause exists to suspend or revoke the real estate license of respondent pursuant to Business and Professions Code section 10137, by reason of Finding 8.

3. Further cause exists to suspend or revoke the real estate license of respondent pursuant to Business and Professions Code section 10177(g), by reason of Finding 10.

4. Further cause exists to suspend or revoke the real estate license of respondent pursuant to Business and Professions Code section 10177(h), by reason of Finding 11.

5. Due consideration has been given to the fact that respondent has been licensed for over twenty-four (24) years with no other disciplinary charges or allegations of misconduct as a result of using her real estate licenses and the fact that she

immediately corrected all the deficiencies found during the Audit.

B. Respondent Carlson

1. Cause exists to suspend or revoke the real estate license of respondent pursuant to Business and Professions Code sections 10177(d) for violating Section 10130, by reason of Finding 9.

2. Due consideration has been given to the fact that the expiration of the license was inadvertent, remedied immediately upon discovery, and may have resulted from a possible error by the Department, and that no apparent harm resulted therefrom.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

A. Respondent Marsh

All licenses and licensing rights of respondent Marsh are suspended for a period of one hundred eighty (180) days from the effective date of this Decision; provided, however, that said suspension shall be stayed for one (1) 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; and

2. 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.

B. Respondent Carlson

All licenses and licensing rights of respondent Carlson are suspended for a period of thirty (30) days from the effective date of this Decision; provided, however, that said suspension shall be stayed for one (1) 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; and
2. 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.

Dated: November 20, 1997



Leslie H. Greenfield
Administrative Law Judge
Office of Administrative Hearings

LHG:me

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MARJORIE P. MERSEL, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
MAY 19 1997
DEPARTMENT OF REAL ESTATE

By *Handwritten Signature*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	NO. H-27162 LA
ROSE DUKE MARSH and)	
CRAIG WILLIAM CARLSON,)	<u>A C C U S A T I O N</u>
Respondents.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ROSE DUKE MARSH and CRAIG WILLIAM CARLSON is informed and alleges as follows:

I

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, acting in his official capacity, makes this Accusation against Respondents ROSE DUKE MARSH and CRAIG WILLIAM CARLSON.

II

ROSE DUKE MARSH (MARSH) and CRAIG WILLIAM CARLSON (CARLSON), sometimes referred to as Respondents, are presently licensed and/or have license rights under the Real Estate Law



1 (Part 1 of Division 4 of the California Business and Professions
2 Code).

3
4 III

5 All references to the "Code" are to the California
6 Business and Professions Code and all references to "Regulations"
7 are to Chapter 6, Title 10, California Code of Regulations.

8 IV

9 At all times mentioned, MARSH was licensed or had
10 license rights issued by the Department of Real Estate
11 (Department) as a real estate broker. MARSH was initially
12 licensed by the Department on October 5, 1977.

13 V

14 At all times mentioned, CARLSON was licensed or had
15 license rights issued by the Department as a real estate
16 salesperson. CARLSON was initially licensed by the Department on
17 February 3, 1992. CARLSON'S real estate license expired on
18 February 2, 1996.

19 VI

20 At all times herein mentioned, in the City of
21 Victorville, San Bernardino County, respondent MARSH dba Victor
22 Valley Mortgage Company, engaged in the business of, acted in the
23 capacity of, advertised, or assumed to act as a real estate
24 broker, within the meaning of Section 10131(d) of the Code,
25 including the operation of a mortgage loan brokerage business with
26 the public wherein lenders and borrowers were solicited for loans
27 secured directly and collaterally by liens on real property,
wherein such loans were arranged, negotiated, processed and



1 consummated on behalf of others for compensation or in expectation
2 of compensation and or fees often collected in advance.

3 VII

4 At all times mentioned herein, in connection with the
5 activities described in Paragraph VI, above, respondent MARSH
6 accepted or received funds in trust (trust funds) from or on
7 behalf of borrowers and lenders, and thereafter made disposition
8 of such funds. Respondent maintained the following trust accounts
9 into which she deposited certain of these funds:

10
11 "Victor Valley Mortgage Trust Account
12 Account Number [REDACTED]
13 Wells Fargo Bank
Victorville, CA 92392

14 VIII

15 On September 12, 1996, the Department completed a field
16 examination of the books and records of MARSH pertaining to the
17 mortgage loan activities described in Paragraphs VI and VII,
18 above, beginning on January 15, 1996, and ending on August 19,
19 1996, which revealed violations of the Code and the Regulations as
20 set forth in the following paragraphs.

21 IX

22 With respect to the trust funds referred to in Paragraph
23 VII, it is alleged that MARSH:

24 (a) Failed to maintain trust fund in her name as the
25 broker, as required by Section 2830 of the Regulations.

26 (b) Permitted an unlicensed person, CRAIG WILLIAM
27 CARLSON, who was not bonded, to be an authorized signatory on the
trust account, in violation of Section 2834 of the Regulations.



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2 X

3 The conduct of respondent MARSH, described in Paragraph
4 IX above, violated the Code and the Regulations as set forth
5 below:

6 PARAGRAPH

PROVISIONS VIOLATED

7 IX (a)

Section 10145 of the Code
and Section 2830 of the Regulation

8 IX (b)

Section 10145 of the Code
and Section 2834 of the Regulation

9
10 Each of the foregoing violations separately constitutes cause for
11 the suspension or revocation of the real estate license and
12 license rights of respondent MARSH under the provisions of Section
13 10177(d) of the Code.

14 XI

15 In the course of the mortgage loan brokerage activities
16 described in Paragraph VI, during the audit period, respondent
17 MARSH, with full knowledge that CARLSON was not licensed by the
18 Department as a real estate salesperson, employed and compensated
19 him after his license had expired to perform acts for which a real
20 estate license is required, for another or others, for or in
21 expectation of compensation, in violation of Section 10137 of the
22 Code.

23 XII

24 The conduct of CARLSON in negotiating the following
25 refinance loans, the Mark and Tina Howard loan, the Mike and Susan
26 Hernandez loan, and the Wilbert and Helen Harris loan, for
27 compensation paid by MARSH, during a period when his real estate
license had expired, as described in Paragraph V, is in violation



1 of Section 10130 of the Code and is cause to suspend or revoke his
2 license and license rights under Section 10177(d) of the Code.

3
4 XIII

5 The overall conduct of respondent MARSH in violating
6 Sections 10137 and 10145 of the Code and Regulation 2830 and 2834,
7 as described in Paragraphs VI and XII above, constitutes
8 negligence or incompetence. This conduct and violation are cause
9 for the suspension or revocation of the real estate license and
10 license rights of respondent MARSH under the provisions of Section
11 10177(g) of the Code.

12 XIV

13 The overall conduct of respondent MARSH in violating
14 Sections 10137 and 10145 of the Code and Regulation 2830 and 2834,
15 as described in Paragraphs VI and XII above, constitutes a lack of
16 supervision. This conduct and violation are cause for the
17 suspension or revocation of the real estate license and license
18 rights of respondent MARSH under the provisions of Section
19 10177(h) of the Code.

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2 WHEREFORE, Complainant prays that a hearing be conducted
3 on the allegations of this Accusation and that upon proof thereof,
4 a decision be rendered imposing disciplinary action against all
5 licenses and license rights of Respondents ROSE DUKE MARSH and
6 CRAIG WILLIAM CARLSON, under the Real Estate Law (Part 1 of
7 Division 4 of the Business and Professions Code), and for such
8 other and further relief as may be proper under other provisions
9 of law.

10 Dated at Los Angeles, California
11 this 19th day of May, 1997.

12 THOMAS MC CRADY }

13 Deputy Real Estate Commissioner
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27 cc: Rose Duke Marsh
Craig William Carlson
Sacto.
DR