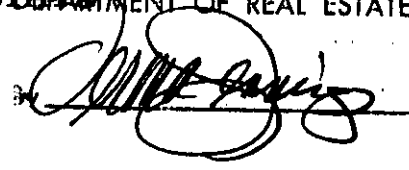


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FILED
NOV - 5 2004

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**



In the Matter of the Accusation of

SILVERLAND REALTY, INC.
and ARA LOUIE KEUSHGERIAN

}

Case No. H-31144 LA

OAH No. L-2004090434

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on December 27, 2004**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: November 5, 2004

By James R. Peel
JAMES R. PEEL, Counsel

cc: Silverland Realty Inc.
A. L. Keushgerian/M. Harris, Esq.
Sacto./OAH

Subst. Flay

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
AUG - 6 2004
DEPARTMENT OF REAL ESTATE

By 

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-31144 LA
12 SILVERLAND REALTY, INC.,)	<u>ACCUSATION</u>
13 and ARA LOUIE KEUSHGERIAN,)	
14 Respondents,)	

15
16 The Complainant, Janice A. Waddell, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 accusation against SILVERLAND REALTY, INC. and ARA LOUIE
19 KEUSHGERIAN, alleges as follows:

20 I

21 The Complainant, Janice A. Waddell, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation in her official capacity.

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II

SILVERLAND REALTY, INC. and ARA LOUIE KEUSHGERIAN (hereinafter referred to as "Respondents") are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter referred to as the "Code").

III

At all times herein mentioned, Respondents SILVERLAND REALTY, INC. and ARA LOUIE KEUSHGERIAN were licensed by the Department of Real Estate of the State of California as real estate brokers.

IV

At all times herein mentioned, Richard Ayvazyan was an officer of Respondent SILVERLAND REALTY, INC.

V

On or about September 12, 2001, Respondents SILVERLAND REALTY, INC. and ARA LOUIE KEUSHGERIAN filed with the Department of Real Estate an application for a real estate broker license for Respondent SILVERLAND REALTY, INC. representing that no corporate background statement was needed for any officer of the corporation. Respondents' broker license was issued October 17, 2001.

VI

The above representation by Respondents was false in that officer Richard Ayvazyan was required to file a corporate background statement for the reason that he had been convicted of a crime which is substantially related to the qualifications,

1 functions, or duties of a licensee of the Department as specified
2 in Section 2910 of the Regulations, including a conviction on
3 December 14, 1999, in the Superior Court of Los Angeles County,
4 for a violation of Penal Code Section 487(a) (grand theft).

5 VII

6 On or about April 1, 2004, pursuant to the provisions
7 of Section 23302 of the California Revenue and Taxation Code, the
8 rights and privileges of Respondent SILVERLAND REALTY, INC., were
9 suspended by the California Secretary of State. Said suspension
10 would have constituted grounds for the denial of Respondent's
11 license under Section 2742 of the Regulations.

12 VIII

13 The conduct of Respondent SILVERLAND REALTY, INC., as
14 alleged above, subjects its license and license rights to
15 suspension or revocation pursuant to Sections 480(c), 10177(a),
16 (d), (f) and (j) of the Code.

17 IX

18 The conduct of Respondent ARA LOUIE KEUSHGERIAN, as
19 alleged above, subjects his license and license rights to
20 suspension or revocation pursuant to Sections 480(c), 10177(a),
21 (f) and (j) of the Code.

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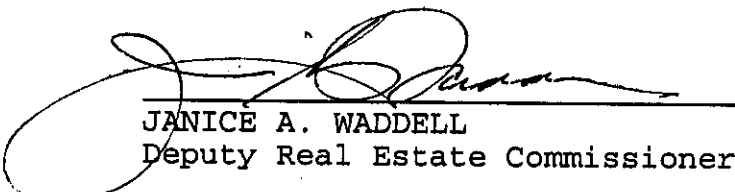
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondents
5 SILVERLAND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

10 Dated at Los Angeles, California,

11 this 5 day of August, 2004.
12

13
14 
15 JANICE A. WADDELL
16 Deputy Real Estate Commissioner
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21 cc: Silverland Realty, Inc.
22 Ara Louie Keushgerian
23 Janice A. Waddell
24 Sacto.
25 AE
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Play*

FILED
MAR - 4 2005
DEPARTMENT OF REAL ESTATE

[Handwritten Signature]

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No: H-31144 LA
)	
SILVERLAND REALTY, INC.,)	L-2004090434
and ARA LOUIE KEUSHGERIAN,)	
)	
Respondents)	

DECISION

The Proposed Decision dated January 27, 2005, 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 March 3, 2005.

IT IS SO ORDERED MARCH 3, 2005.

JEFF DAVI
Real Estate Commissioner

Larry Alamao

By Larry Alamao
Chief Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SILVERLAND REALTY, INC.,

and

ARA LOUIE KEUSHGERIAN,

Respondents.

Case No. H-31144 LA

OAH Case No. L2004090434

PROPOSED DECISION

This matter came on regularly for hearing before Mark T. Rookh, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California on December 27, 2004.

James R. Peel, Real Estate Counsel, represented Complainant Janice A. Waddell (Complainant).

Michael Harris, Rogers & Harris, represented Respondent Ara Louie Keushgerian (Respondent Keushgerian), who was present throughout the hearing.

No appearance was made on behalf of Respondent Silverland Realty, Inc. (Silverland or the corporation).

Oral and documentary evidence was received, the matter argued, the record was closed at the conclusion of the hearing and the case submitted for decision.

FACTUAL FINDINGS

1. Complainant Janice A. Waddell, Deputy Real Estate Commissioner of the State of California, made and filed the Accusation in this proceeding in her official capacity and not otherwise.

2. Respondent Silverland Realty, Inc., was originally issued corporation license number 01310233 by the Department on May 10, 2001. The Designated Officer at that

time was Astkhih Zargaryan. On October 17, 2001, Respondent Ara Louie Keushgerian was added as an Additional Officer. On March 18, 2002, Zargaryan was canceled as Designated Officer, and Respondent Keushgerian was changed to Designated Officer. On July 3, 2003, the license was canceled. (Exhibit 2.)

3. Respondent Ara Louie Keushgerian is licensed by the Department as a real estate broker, license ID# 0086789. Respondent Keushgerian had previously been licensed by the Department as a real estate salesperson. Respondent's license is current, with an expiration date of June 7, 2006. (Exhibit 3.)

4. The Accusation in this matter was filed on August 5, 2004, and was served on Respondents. Respondent Keushgerian timely filed a Notice of Defense contesting the charges set forth therein, and this hearing followed.

5. No notice of defense was ever filed on behalf of Respondent Silverland Realty, Inc.

6. On September 12, 2001, the Department received a corporation license application on behalf of Silverland. In Section II of the application, Respondent Keushgerian was listed as the broker officer. Respondent Keushgerian's name is also listed under the Officer Certification, which he allegedly signed under penalty of perjury.

Section III of the application discusses the circumstances under which a Corporation Background Statement must be submitted. One such circumstance is if an officer of the corporation has been convicted of a crime which is substantially related to the qualifications, functions, or duties of a real estate licensee. The application requires that, if the facts establish that such a Statement was not required for "any officers or persons owning or controlling more than ten percent of the corporation shares, including myself," a Certification must be made to that effect. Such a Certification was made for this application. This Certification appears to bear the same signature as that credited to Respondent Keushgerian under the Officer Certification.

The application package also includes a State Public Benefits Statement, which was submitted to the Department in October 2001, several weeks after the application itself was submitted. Once again, what appears to be the same signature is found on the Statement, and attached thereto is a copy of what purports to be Respondent Keushgerian's birth certificate from Rhode Island. (Exhibit 5.)

7. At all times relevant to this proceeding, the Chief Executive Officer of Silverland was Richard Ayvazyan. (Exhibit 4.)

8. On December 12, 1999, Ayvazyan was convicted in case number LA032922 of the Superior Court of the County of Los Angeles, State of California, on his plea of nolo contendere to one count of violating Penal Code section 487, subdivision (A) (grand theft), a felony and a crime that is substantially related to the qualifications, functions, and duties of a real estate licensee. Although there is no evidence in the record as to the

specific facts or circumstances underlying the conviction, the court minute order indicates that the case originated from an arrest made by the Los Angeles Police Department's bunco-forgery division. (Exhibit 6.)

9. Respondent Keushgerian denies any involvement with Silverland, and denies ever knowingly serving as an officer for the corporation. Further, Respondent Keushgerian denies signing and/or preparing the application at issue in this proceeding, or a letter sent to the Department on or about April 9, 2002, in which Respondent Keushgerian allegedly represents himself as the designated broker for the corporation. (Exhibit D.) Finally, Respondent Keushgerian denies knowing anything about Ayvazyan's criminal record until very recently. However, Respondent Keushgerian admits knowing Ayvazyan prior to the formation of the corporation, and further admits that he would give Ayvazyan his "opinion" regarding investment properties, but denies ever doing business with Ayvazyan or becoming involved in any transactions with him. Respondent also admits preparing, signing, and sending a letter to the Department in June 2003, wherein he resigns "as broker to Silverland Realty, Inc." (Exhibit B.) In comparing the signature on the June 2003 letter with the signatures on the application, the State Public Benefits Statement, and the April 2002 letter, while it appears that the signatures are similar, it cannot be said that they are identical, or that they were clearly produced by the same hand.

10. Ayvazyan is currently licensed by the Department as a real estate salesperson. That license is restricted, with an expiration date of February 16, 2008. (Exhibit 7.)¹ Neither party in this matter issued Ayvazyan a subpoena to appear as a witness.

11. Some of Respondent Keushgerian's testimony is essentially credible, specifically his denial of any knowledge of Ayvazyan's criminal record, and his denial regarding any involvement with Silverland at the time the application was submitted in August 2001. His testimony as to the latter is supported by the absence of Respondent Keushgerian's name on any of the corporate documents filed with the Secretary of State, the lack of *any* documented involvement on his part as a corporate officer until October 2001, and the fact that Ayvazyan's conviction was for grand theft, and that the crime appears to have involved bunco activity and forgery. At the very least, this raises the distinct possibility that Ayvazyan submitted the application and forged the signature of Respondent Keushgerian, who Ayvazyan would know to be a licensed broker, in order to improve the corporation's chances of licensure.

However, some of Respondent Keushgerian's other testimony is highly suspect, and tends to undermine his claim that he *never* had any involvement with Silverland. This includes the presence of Respondent Keushgerian's birth certificate as an attachment to the Public Benefits Statement, which was submitted at least a month after the actual application and shortly before Respondent Keushgerian is first listed as an officer of the corporation; the June 2003 letter Respondent Keushgerian admits sending to the

¹ Respondent's trial brief makes reference to Ayvazyan obtaining his restricted license via a Statement of Issues proceeding that was resolved by stipulation in January 2004.

Department, the reason for which he could not recall, and the purpose of which was not to report Ayvazyan or Silverland for misappropriating his name, but simply to resign as the corporation's broker; and the fact that Respondent Keushgerian admits that he has been in contact with Ayvazyan as recently as 10 to 12 days prior to this hearing. At the very least, these issues raise the distinct possibility that Respondent Keushgerian did associate with Silverland and Ayvazyan at some date after the original application was submitted.

LEGAL CONCLUSIONS

Cause exists to suspend or revoke Respondent Silverland Realty, Inc.'s real estate corporation license pursuant to the provisions of Business and Professions Code sections 480, subdivision (c), and 10177, subdivisions (a), (d), (f), and (j), for attempting to procure a real estate license by fraud, misrepresentation and deceit, as set forth in Factual Findings 5, 6, 7, and 8.

The evidence presented clearly established that 1) an application for licensure was submitted to the Department on behalf of Respondent Silverland; 2) Richard Ayvazyan was an officer of Silverland at the time the application was submitted; 3) Ayvazyan was convicted of a felony, grand theft, prior to the submission of the application; 4) because of that conviction, a Corporation Background Statement for Ayvazyan was required to be submitted as part of that application; and 5) such a Statement was not submitted. The foregoing is sufficient to impose suspension or revocation on Respondent Silverland's license. No notice of defense was ever filed on behalf of Respondent Silverland, and no appearance on behalf of Respondent Silverland was made at the hearing. Accordingly, the appropriate penalty is revocation of Respondent Silverland's license.²

As to Respondent Keushgerian, it was not established by clear and convincing evidence that he was the individual who submitted and signed the original application in August 2001. The license history for both Respondents Silverland and Keushgerian notes that Respondent Keushgerian did not become an officer until October 17, 2001, after the application was submitted. (Exhibits 2 and 3.) At the hearing, Respondent Keushgerian denied signing any of the documents submitted into evidence with the exception of the July 2003 letter in which he resigned as Respondent Silverland's broker. (Exhibit B.) As the trier of fact, the administrative law judge may determine the genuineness of handwriting, or the lack thereof, by comparison with evidence admitted or treated as genuine. (Evidence Code section 1417.) As noted in Factual Finding 9, it is not clear that all of the signatures purporting to belong to Respondent Keushgerian are his. While it is not necessary for Complainant to prove that all those signatures were in fact made by Respondent Keushgerian, in order to prove the specific allegations against him, Complainant must at a minimum establish that Respondent Keushgerian was the one who certified the false statement on the application regarding Ayvazyan's criminal record. This Complainant has not done.

² Although Respondent Silverland's license was canceled in July 2003, the Department still has jurisdiction to impose discipline, pursuant to Business and Professions Code section 118.

It is settled that the trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal. 3d 51, 67.) As noted in Factual Finding 11, some aspects of Respondent Keushgerian's testimony are more credible than others. For example, while his denial of involvement with Silverland at the time the application was submitted in August 2001 is credible, his denial of any involvement with Silverland at any time during its history is not. Based on the evidence submitted, it appears that Respondent Keushgerian did not have any involvement with Silverland until October 2001, at the time the State Public Benefits Statement was submitted. Despite misgivings regarding the totality of Respondent's testimony, because the factual allegations are clearly limited to the application that was submitted in August 2001, and because it was not established that Respondent Keushgerian was involved in the submission of the original application, the charges against him have not been proven. Accordingly, the accusation as it applies to him must be dismissed.

ORDER

The license and licensing rights of Respondent Silverland Realty, Inc., under the Real Estate Law are revoked.

The accusation as to Respondent Ara Louie Keushgerian is dismissed.

DATED: 1/27/05



MARK T. ROOHK
Administrative Law Judge
Office of Administrative Hearings