FILED
MAR 28 2006
DEPARTMENT OF REAL ESTATE
By

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	No. H-31823 LA
ROGER LYNN GRACE,	L-2005080498
Respondent.	

DECISION

The Proposed Decision dated February 15, 2006, 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.

Pursuant to Section 11517(b)(3) of the Government Code of the State of California, the Proposed Decision on page 1, Factual Findings paragraph 1, line 5, "salesperson" is amended to read "broker".

This Decision shall become effective at 12 o'clock noon on April 17, 2006.

IT IS SO ORDERED 3-22, 2006.

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation against : ROGER LYNN GRACE, Respondent.	Case No. H-31823 LA OAH No. L2005080498

PROPOSED DECISION

On January 9, 2006, in Riverside, California, Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James R. Peel, Real Estate Counsel, the Department of Real Estate, appeared on behalf of complainant Janice A. Waddell, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Roger Lynn Grace, respondent, appeared and represented himself at the hearing.

The matter was submitted on January 9, 2006.

FACTUAL FINDINGS

1. Accusation number H-31823 LA, dated April 8, 2005, by complainant Janice A. Waddell, in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California against respondent Roger Lynn Grace. The accusation was filed on April 12, 2005. The accusation alleges respondent is licensed as a real estate broker ~~salesperson~~ and the Department found irregularities in respondent's books and records after an audit was conducted. On May 2, 2005, respondent filed a notice of defense dated April 22, 2005 requesting a hearing on this matter. The proceeding herein followed.

2. Respondent holds a real estate broker's license that was issued by the Department of Real Estate ("the Department"). Respondent has been licensed by the Department since 1987. He owns and operates a real estate office specializing in real estate management and sales in Indio, California. Respondent's license has not previously been disciplined by the Department.

3. In January 2003, the Department conducted an examination and audit of respondent's books and records maintained in his real estate office. The audit reviewed books and records for the period of November 1, 2001 through November 30, 2002.

4. The audit revealed several violations of law and regulations governing real estate transactions as follows:

A. Respondent's records revealed that he failed to maintain a complete and accurate columnar record in that the daily balance of the columnar record was incorrect. This was a violation of California Code of Regulations, title 10, section 2831.

B. Respondent's records revealed that he maintained separate records for each beneficiary, but they were not accurate in that on several occasions the check numbers posted in the records were incorrect. This was a violation of California Code of Regulations, title 10, section 2831.1.

C. Respondent had failed to reconcile the columnar record with the separate records on a monthly basis as required by law. This was a violation of California Code of Regulations, title 10, section 2831.2.

D. Respondent failed to ensure the delivery of a properly signed certificate of ownership from seller, Josafat Meza-Gomez ("Gomez"), to buyer, Michael Huff ("Huff"), after the sale of a mobile home. This was a violation of Business and Professions Code sections 10177.2 and 10131.7, subdivision (g).

E. In 2002, respondent assisted a long-time client, Gomez, in selling her mobile home to buyer Huff. The mobile home was located at 80-000 Avenue, 48, Space #73, Indio, California and sold for $15,500. Respondent received the purchase price from Huff on behalf of Gomez and failed to deposit those funds into a real estate broker trust account. Instead he deposited those funds in his own business account in order to apply those funds towards Gomez' planned purchase of one of respondent's own properties. Respondent then used these funds for his own business expenses. Respondent had permission from Gomez to apply the mobile home sale proceeds towards her purchase of respondent's property, but she did not give him permission to deposit those funds directly into his personal or business account. The money was ultimately going to be paid to respondent, but he did not handle the funds properly and thereby violated Business and Professions Code section 10145, subdivision (a). However, there was no evidence that respondent acted fraudulently or dishonestly in any way.

5. Respondent readily acknowledged at the hearing that he made some mistakes in the operation of his real estate business. Respondent adequately explained the circumstances of the mobile home sale and his failure to properly ensure the delivery of the certificate of ownership. Huff was not cooperative when respondent tried to contact him to finalize the certificate of ownership for the mobile home, although Huff did take possession of the mobile home. In addition, when Gomez testified it became apparent that respondent did not act fraudulently or dishonestly in connection with this transaction.

Respondent impressed this administrative court as a hard working, generous, and sincere individual. He accepted full responsibility for his actions and expressed remorse for the mistakes he made in his bookkeeping and with regard to the Gomez/Huff transaction. Respondent has clearly learned from his mistakes and demonstrates a determination that he will not make such mistakes in the future. Respondent is a life-long resident of Indio and is extremely active in his community. Respondent founded an organization called Community Involvement Makes a Difference that works with school children to get them involved in their community with activities like painting over graffiti and cleaning up streets. Respondent is also an active member of the Chamber of Commerce and the Board of Realtors. In 1996, he served as the Director of the Board of Realtors for the State of California. Respondent is also a very active member of his church and works tirelessly to help the homeless in his community. Respondent's mistakes certainly warrant discipline, but he does not seem to represent a threat to the public or the consumers who might use his real estate services so as to warrant outright revocation of his license.

LEGAL CONCLUSIONS

1. Cause exists to discipline respondent's license as a real estate broker pursuant to Business and Professions Code sections 10177, subdivision (d) and 10177, subdivision (g) in that respondent acted with willful disregard of the Real Estate Law and regulations and demonstrated negligence or incompetence in performing these acts, as set forth in Findings 2-5. However, in light of the evidence of mitigation, extenuation and rehabilitation, it would not be against the public interest to allow respondent to continue to work as a real estate broker subject to strict conditions of probation.

2. Cause does not exist to discipline respondent's license as a real estate broker pursuant to Business and Professions Code section 10176, subdivision (i) in that there was insufficient evidence of fraud or dishonesty, as set forth in Findings 2-5.

ORDER

All licenses and licensing rights of Respondent Roger Lynn Grace under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of

nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

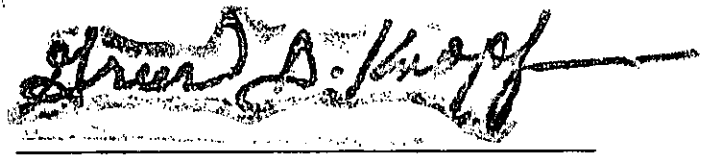
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

6. Respondent shall submit to the Commissioner proof of completion of a continuing education course in real estate bookkeeping and maintenance of trust accounts, as directed by the Commissioner.

DATED: 2/15/06



GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings

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APR 12 2005
DEPARTMENT OF REAL ESTATE
BY

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of ROGER LYNN GRACE, Respondent.	No. H-31823 LA A C C U S A T I O N

The Complainant, Janice A. Waddell, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ROGER LYNN GRACE, alleges as follows:

I

The Complainant, Janice A. Waddell, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against ROGER LYNN GRACE.

II

ROGER LYNN GRACE (hereinafter referred to as "Respondent") is presently licensed and/or has license rights

under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter Code).

III

At all times herein mentioned, Respondent, was licensed by the Department of Real Estate of the State of California as a real estate broker.

IV

At all times herein mentioned, Respondent, on behalf of others in expectation of compensation, engaged in the business, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Sections 10131(a) and (b) of the Code.

V

On or about January 16, 2003, the Department completed an examination of Respondent's books and records, pertaining to the activities described in Paragraph IV above, covering a period from November 1, 2001, through November 30, 2002, which examination revealed violations of the Code and of the Regulations as set forth below.

VI

The examination described in Paragraph V above, determined that, in connection with the activities described in Paragraph IV above, Respondent accepted or received funds, including funds in trust (hereinafter "trust funds") from or on behalf of principals, and thereafter made deposit or disbursement of such funds.

VII

In the course of activities described in Paragraphs IV and VI and during the examination period described in Paragraph V, Respondent acted in violation of the Code and the Regulations as follows, and as more specifically set forth in Audit Report Nos. LA 020164 and LA 020218 and related exhibits.

1. Violated Regulation 2831 in that the columnar record was not complete and accurate including the fact that the daily balance was incorrect.

2. Violated Regulation 2831.1 in that separate records for each beneficiary were not accurate in that on various occasions the check numbers posted on the records were incorrect.

3. Violated Regulation 2831.2 in that the columnar record was not reconciled with the separate records on a monthly basis.

4. Violated Section 10177.2 and Section 10131.7(g) by failing to provide for the delivery of a properly endorsed certificate of ownership or certificate of title of a mobilehome from the seller to the buyer Michael Huff.

5. Violated Section 10176(i) and Section 10145(a) by failing to deposit into a real estate broker trust account the funds received from buyer Michael Huff for the purchase of a mobilehome located at 80-000 Ave. 48, Space #73, Indio, California in the approximate amount of $15,500. Instead, Respondent misappropriated the buyer's funds to his own personal use and benefit without the knowledge or permission of the buyer and the seller Josafat Meza-Gomez (Thomas).

VIII

The conduct of Respondent, as alleged above, subjects his real estate licenses and license rights to suspension or revocation pursuant to Sections 10176(i), 10177(d) and/or 10177(g) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of respondent ROGER LYNN GRACE under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this 8 day of April, 2005.

JANICE A. WADDELL
Deputy Real Estate Commissioner

cc: Roger Lynn Grace
Janice A. Waddell
Auditor D. Bautista
L.A. Audit Section
Sacto.
LM