

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

JANINA NAOMI GARRAWAY,

Respondent..

DRE No. H-33981-LA

OAH No. L-2007080757

DECISION AFTER REJECTION

This matter came on for hearing before Vincent Nafarrete, Administrative Law Judge, Office of Administrative Hearings, State of California, in Los Angeles, California, on June 13, 2008.

James R. Peel, Counsel, represented the Complainant. The Respondent, Janina Naomi Garraway, appeared in person and was represented by Alan J. Romero, Esq..

Evidence was received, the record was closed, and the matter was submitted.

On July 11, 2008, the Administrative Law Judge rendered a Proposed Decision (hereinafter "the Proposed Decision") which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was notified that the case would be decided by the Real Estate Commissioner upon

1 the record, the transcript of proceedings held on June 13, 2008, and upon written argument
2 offered by Respondent and Complainant.

3 Written argument was submitted by Respondent. Written argument has been
4 submitted on behalf of Complainant.

5 I have given careful consideration to the record in this case, including the
6 transcript of proceedings of June 13, 2008 and written argument offered by Respondent and
7 Complainant.

8 The following shall constitute the Decision of the Real Estate Commissioner in
9 these proceedings.

10 FINDINGS OF FACT

11 1. The Administrative Law Judge takes official notice that, on May 18,
12 2007, the Accusation of Janina Naomi Garraway and Jonathan Derek Long, Case No.
13 H-33981 LA, was made and filed by complainant Janice A. Waddell in her official capacity
14 as a Deputy Real Estate Commissioner, Department of Real Estate, State of California
15 (hereinafter Department).

16 2. (A) On or about October 24, 2005, the Department issued real estate
17 salesperson's license no. 01715677 and licensing rights to respondent Janina Naomi
18 Garraway. Her real estate salesperson's license expires on October 23, 2009, unless renewed,
19 and currently is in full force and effect.

20 (B) On or about July 2, 2007, Respondent filed a Notice of Defense,
21 acknowledging receipt of the Accusation and requesting a hearing in order to present a
22 defense to the allegations contained in the Accusation.

23 3. (A) On or about August 19, 2003, the Department issued real estate
24 salesperson's license no. 01715677 and licensing rights to Jonathan Derek Long.

25 (B) On May 18 and 27, 2007, the Department served Long with the
26 Accusation and Statement to Respondent by certified mail at his address of record pursuant
27 to Government Code sections 11503 and 11505. Long did not file a notice of defense.

1 (C) On March 13, 2008, after Long failed to file a Notice of Defense
2 within the time prescribed by Government Code section 11506, the Department issued a
3 Default Order, finding that Long was in default of the Accusation.

4 (D) On or about May 14, 2008, the Department issued a Decision and
5 Order revoking Long's real estate license and licensing rights pursuant to Government Code
6 sections 11520 and 11505. The Decision became effective on June 9, 2008.

7 4. (A) At all times relevant herein, Long was a licensed real estate
8 salesperson and employed as a real estate agent by Century 21 Lois Lauer Realty of Fontana.

9 (B) At all times relevant herein, Deede Thaxton was a licensed real
10 estate salesperson and employed as a real estate agent by Century 21 Lois Lauer Realty of
11 Fontana (Lois Lauer Realty).

12 5. (A) On or about March 21, 2005, Long acting on behalf of Lois Lauer
13 Realty entered into an agreement to list and/or sell the real property located at 11187 Laurel
14 Avenue, Bloomington (hereinafter also Bloomington house or property). As such, Long was
15 the listing agent and Lois Lauer Realty was the listing real estate brokerage firm.

16 (B) The Bloomington property was a single family residence situated
17 on an approximately one acre parcel of land in a semi-rural area of San Bernardino County.
18 The owner of the property and seller was William K. Byrne.

19 6. On an undetermined date prior to March 23, 2005, Respondent hired
20 and/or employed Thaxton to act as her real estate salesperson or agent in order to find and
21 buy real estate. At that time, Thaxton was the sister-in-law of Respondent's boyfriend.
22 Respondent was 23 years old and single. She was working as a professional dancer and actor
23 and living with her parents and sister in the family home in Colton.

24 7. (A) On an undetermined date on or before March 23, 2005, Respondent
25 was taken by Thaxton and Long to view the Bloomington house, which was approximately
26 15 minutes from her parents' home. The property had been a long-term rental property, was
27 in poor condition, and needed repairs, but Respondent thought that it had "potential."

1 (B) On March 23, 2005, Respondent with the assistance of her real
2 estate agent Thaxton, made an offer to buy the Bloomington house for a purchase price of
3 \$425,000 by executing a Residential Purchase Agreement (Exh. 11). Respondent had given a
4 deposit of \$6,000 to her real estate agent Thaxton by providing a personal check made
5 payable to Lois Lauer Realty. Respondent proposed obtaining a first mortgage loan for the
6 purchase in the sum of \$419,000, agreed that the escrow holder would be the escrow
7 division of Lois Lauer Realty, and proposed that the seller pay the cost not to exceed \$400 of
8 a one-year home warranty plan. On March 24, 2005, Byrne as the owner and seller of the
9 Bloomington house accepted Respondent's offer. Thaxton of Lois Lauer Realty was
10 Respondent's agent and the selling agent. Long of Lois Lauer Realty was the seller's agent
11 and listing agent on this real estate transaction.

12 (C) On March 29, 2005, the seller Byrne made a counter-offer,
13 indicating that he would not provide a home warranty for the Bloomington house.
14 Respondent accepted the condition of the counter-offer.

15 (D) On or about March 29, 2005, Respondent was introduced by Long
16 to Wendell McAdoo of Wholesale Capital Corporation, a mortgage brokerage company
17 located in Moreno Valley. McAdoo advised Respondent that he would be able to obtain a
18 mortgage loan for her to purchase the Bloomington property. In a letter dated March 29,
19 2005 (Exh. A), McAdoo represented that Wholesale Capital Corporation was processing a
20 loan package for Respondent and that she would qualify for a conventional loan based on
21 documentation of her income, assets, and credit. McAdoo stated final approval of the loan
22 was subject to the review of the purchase contract, preliminary title report, and the appraisal.

23 (E) On an undetermined date, Respondent and seller with the
24 assistance of their real estate salesperson agents from Lois Lauer Realty opened an escrow at
25 the Escrow Division of Lauer Realty for the sale, purchase, and transfer of the Bloomington
26 house.

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1 (F) On an undetermined date, Wholesale Capital contracted for the
2 appraisal of the Bloomington house. The property was reportedly appraised for at least
3 \$425,000. The appraiser was named in a list of approved appraisers of the lender Greenpoint
4 Mortgage Funding, Inc., of Novato (Greenpoint Mortgage or lender).

5 8. (A) On or about April 20, 2005, seller Byrne and his real estate agent
6 Long proposed to Respondent that, if she agreed to purchase the Bloomington property on an
7 "as is" basis, the seller would pay \$40,000 of the agreed upon sales price of \$425,000 to
8 Respondent and Respondent could use this sum to pay for the estimated costs to repair and
9 improve the interior and exterior of the property. The Bloomington property was in poor
10 condition and had water drainage problems. Respondent's real estate agent Thaxton was
11 present when the seller and Long presented this proposal. Respondent also consulted with a
12 certified public accountant before agreeing to the seller's proposal.

13 (B) Consequently, on April 19, 2005, Respondent, the seller Byrne, and
14 Long entered into a Special Addendum to Real Estate Contract (Exh. 9), which was a
15 supplemental disclosure to the escrow for the sale of the Bloomington property. Under this
16 addendum, Respondent and the seller agreed that Respondent would obtain a loan in the
17 amount of the sales price of \$425,000, that the true sales price or cost basis was \$385,000,
18 and that the seller would transfer \$40,000 to Respondent to be used for the repair and
19 improvement of the property. The addendum further provided that, as a matter of
20 consideration, Respondent agreed to buy the property on an "as is" basis due to the condition
21 of the property and "a history of intermittent water drainage problems." The addendum was
22 prepared by seller Bryne and/or his tax advisor.¹ The Special Addendum was submitted to
23 the escrow division of Lois Lauer Realty and made part of the escrow instructions for the

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27 ¹ The Special Addendum stated, " For purposes of determining the actual cost basis for the Internal Revenue Service, both buyer and seller hereby confirm the true sale price of said property to be \$385,000.00."

1 sale and purchase of the Bloomington property. Respondent also advised her mortgage
2 broker McAdoo about the Special Addendum.²

3 9. On April 20, 2005, the escrow division of Lois Lauer Realty prepared
4 an amended instruction with respect to the escrow for the sale and purchase of the
5 Bloomington house. The amended escrow instruction provided that Respondent would
6 obtain a new, conventional first trust deed loan in favor of Greenpoint Mortgage in the
7 principal amount of \$340,000 and a new, conventional second trust deed loan in favor of
8 Wholesale Capital in the principal amount of \$85,000. Respondent signed and agreed to the
9 amended escrow instruction. The amended escrow instruction was filed with the escrow
10 division of Lois Lauer Realty and made part of the escrow instructions for the sale and
11 transfer of the Bloomington property.

12 10. On April 20, 2005, McAdoo of Wholesale Capital took information
13 from Respondent and prepared a Uniform Residential Loan Application (Exh. 4) to obtain a
14 residential mortgage loan for her purchase of the Bloomington house. As set forth in this
15 loan application, the purchase price was \$425,000 and Respondent applied for a \$340,000
16 conventional first mortgage loan. The loan application also stated that Respondent was
17 applying for a second or subordinate mortgage of \$85,000. Respondent represented on this
18 loan application that the Bloomington property would be her primary residence and that she
19 intended to occupy the property.

20 11. On April 20, 2005, Respondent signed and executed a Borrower's
21 Closing Affidavit in which she stated that the Bloomington property was to be her primary
22 residence. By signing the Borrower's Closing Affidavit, Respondent acknowledged that the
23 lender Greenpoint Mortgage was granting the loans based on the representations made in the
24 loan application and she certified that all statements related to the loan application had not
25 changed and, to the best of her knowledge, would not change in the foreseeable future.

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27 ² The evidence was not clear whether the reduction of the sales price and conveyance of \$40,000 to Respondent to perform repairs was proposed by the seller as an incentive to buy and repair the property without cost to the seller or was an attempt by the seller to reduce his tax liability from sale of the property.

1 12. (A) McAdoo and Wholesale Capital submitted Respondent's loan
2 application or applications to Greenpoint Mortgage and obtained the first mortgage of
3 \$340,000 as well as the second mortgage of \$85,000 from said lender for Respondent's
4 purchase of the Bloomington house. Greenpoint Mortgage relied upon the information
5 contained in the loan application and other documents provided by Wholesale Capital to
6 underwrite and approve the two mortgage loans.

7 (B) On or about April 26, 2005, Greenpoint Mortgage funded the first
8 and second mortgage loans for Respondent's purchase of the Bloomington house and the
9 escrow closed on the real estate transaction. The escrow division of Lois Lauer Realty paid
10 the attendant costs or charges and remitted funds to the respective parties, including \$40,000
11 that was transferred to Respondent's credit union account. The first and second trust deeds
12 were recorded. On May 3, 2005, the escrow division of Lois Lauer Realty prepared a
13 Settlement Statement (Exh. 7).

14 13. (A) Greenpoint Mortgage funded the two mortgages without having
15 information or knowledge of the Special Addendum and amended escrow instruction that
16 \$40,000 of the loan proceeds was to be transferred to Respondent for repairs of the subject
17 property. Prior to funding the loan in April 2005, Greenpoint Mortgage received an estimate
18 settlement statement that indicated the seller would receive \$352,837.13. The final
19 Settlement Statement prepared by the escrow division of Lois Lauer Realty showed that the
20 seller received the loan proceeds less approximately \$40,000. Greenpoint Mortgage would
21 not have made or funded the loans upon the same terms or interest rates if the lender was
22 aware that Respondent as the borrower was to receive \$40,000 from the loans because the
23 purchase price of the property would have been deemed less than the loan amounts.

24 (B) Respondent; her real estate agent Thaxton; the seller's real estate
25 agent Long; the listing and selling real estate company and escrow company Lois Lauer
26 Realty; and the mortgage broker McAdoo of Wholesale Capital; and each of them, knew
27 or should have known of the Special Addendum and the attendant escrow instruction and

1 failed to inform Greenpoint Mortgage about the reduction of the purchase price of the
2 Bloomington property.

3 14. (A) After she purchased the Bloomington house on or about April 26,
4 2005, Respondent evicted the existing tenant from the property. The eviction process took
5 approximately 60 days because the tenant refused to leave after having lived there for 10
6 years. Thereafter, Respondent commenced repairs of the property by painting the house,
7 installing new tile and a counter for the bathroom, installing a new floor in the dining room,
8 upgrading the kitchen, remodeling the patio, and removing weeds and over-grown
9 vegetation.

10 (B) After purchasing the Bloomington property, Respondent moved
11 into the house and lived there. However, she became less enamored of the house after
12 finding a snake on the property, mice droppings in the house, and insects in or about the
13 house. Respondent was not accustomed to living in a semi-rural area. She then decided to
14 sell the house.

15 (C) In or about January 2006, Respondent sold the Bloomington house
16 for \$505,000 after listing the property with a real estate broker. She owned the house for
17 approximately nine months. She did not rent the house to anyone before selling it.

18 15. On an undetermined date in 2007, the Department received a complaint
19 from the daughter of the seller Byrne that Long had made misrepresentations about the sale
20 of the Bloomington property. The Department opened an investigation of Long and Lois
21 Lauer Realty. During the investigation, a deputy real estate commissioner spoke to
22 Respondent on the telephone on one occasion.

23 16. (A) Based on Findings 1 - 15 above, Respondent made a false
24 representation to the lender Greenpoint Mortgage, which was substantial, when she signed
25 the Uniform Residential Loan Application and stated to the lender that the purchase price of
26 the Bloomington house was \$425,000. This information on the loan application was not true

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1 and correct and Respondent knew that it was not true and correct since she had previously
2 signed the Special Addendum and was aware that the purchase price was \$385,000.

3 (B) Respondent's conduct in misrepresenting the purchase price to the
4 lender was dishonest within the meaning of Business and Professions Code section 10177,
5 subdivision (j), and would have warranted the denial of her original application for a real
6 estate license under Business and Professions Code sections 10177, subdivision (f).

7 17. (A) It was not established that, in order to induce the lender to provide
8 the required financing, Respondent conspired with Long to falsely inform the lender that the
9 purchase price for the Bloomington property was \$425,000 and that Respondent intended to
10 occupy the property.

11 (B) Complainant did not present any evidence of a conspiracy or that
12 Respondent conspired with Long to mislead, deceive, or make misrepresentations to the
13 lender Greenpoint Mortgage about the purchase price or her occupancy of the property. As
14 the buyer, Respondent was represented by another real estate salesperson, Thaxton, in this
15 transaction. Long represented the seller. No evidence was presented of any other relationship
16 or any discussions between Respondent and Long. Long did introduce Respondent to the
17 mortgage broker McAdoo who prepared the loan application and submitted the loan
18 documents to the lender.

19 18. It was not established that Respondent made a false representation to
20 the lender that she intended to occupy the Bloomington house or that the house was to be her
21 primary residence. Nor was it established that Respondent knew or should have known that
22 the representations she made to the lender that she intended to occupy the property were
23 false. The evidence demonstrated by clear and convincing proof to a reasonable certainty
24 that, when she completed the loan application and Borrower's Closing Affidavit to obtain
25 financing for her real estate purchase, Respondent intended to occupy and live at the
26 Bloomington house and that the property was to be her primary residence. She, in fact, did
27 occupy and live at the house. She repaired the house because it was in poor condition. She

1 did not rent it to anyone thereafter. Respondent's testimony that she intended to occupy the
2 house when she applied for the loan and when she purchased the property was credible. On
3 the other hand, the testimony of the former deputy real estate commissioner about a
4 telephone conversation with Respondent was not persuasive in showing her intent, for his
5 testimony on this subject was scant and he did not have a clear recollection of the
6 investigation of this matter.

7 19. It was not established that the lender Greenpoint Mortgage was
8 damaged financially by this real estate transaction or the approval and funding of the
9 mortgage loans for Respondent's purchase of the Bloomington property. As established by
10 the testimony of a litigation paralegal from Greenpoint Mortgage, the lender did not suffer
11 any financial loss by this transaction and attendant loans. Greenpoint Mortgage received full
12 payment on both the first and second mortgage loans that it provided for Respondent's real
13 estate purchase.

14 20. It was not established that Respondent demonstrated negligence or
15 incompetence in performing any act for which she is required to hold a license. No evidence
16 was presented that Respondent performed any act requiring a real estate license. When she
17 purchased the property, Respondent was not a real estate licensee and her real estate agent
18 and mortgage broker performed all activities requiring a license for her.

19 21. Respondent has been a licensed real estate salesperson for less than
20 three years. She works for real estate broker Homes Reseller on an intermittent basis because
21 she has been busy pursuing her career in the entertainment industry as a dancer and actor.
22 She married in July 2007 and lives with her husband in north Los Angeles County. She has
23 no disciplinary history on her real estate license.

24 CONCLUSIONS OF LAW

25 1. Grounds exist to revoke or suspend Respondent's real estate
26 salesperson license under Business and Professions Code section 10177, subdivision (j), in

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1 that Respondent engaged in conduct which constituted dishonest dealing, based on Findings
2 2 - 16 above.

3 2. Grounds exist to revoke or suspend Respondent's real estate
4 salesperson license under Business and Professions Code section 10177, subdivision (f), in
5 that Respondent acted or conducted herself in a manner that would have warranted the
6 denial of her application for a real estate license, based on Findings 2 - 16 above.

7 3. Grounds do not exist to revoke or suspend Respondent's real estate
8 salesperson license under Business and Professions Code section 10177, subdivision (g), in
9 that it was not established that Respondent demonstrated negligence or incompetence in
10 performing any act for which she is required to hold a license, as set forth in Finding 20
11 above.

12 4. Discussion—In April 2005, Respondent purchased a home after
13 obtaining mortgage loans from the lender. On her loan application, she made a
14 misrepresentation to the lender about the purchase price of the property. The
15 misrepresentation was substantial since the true purchase price was actually \$40,000 less
16 and the lender would not have made its loans if it had known the true purchase price.
17 Respondent's conduct was dishonest and would have warranted the denial of her real estate
18 license that was issued to her in October 2005.

19 In mitigation of her conduct, Respondent was not a real estate licensee when
20 she signed the loan application and was represented by a licensed real estate salesperson in
21 the transaction. Her real estate agent as well as the seller's real estate agent Long, the
22 mortgage broker McAdoo, and the realty-escrow company were all aware of the true
23 purchase price and none of them advised the lender of the true state of affairs. In addition,
24 Greenpoint Mortgage was not financially damaged by its reliance on Respondent's
25 representation and its funding of the loans, for the lender was fully paid on its loans. Based
26 on the evidence of mitigation, Respondent cannot be said to represent a danger to the public

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1 interest and welfare and the appropriate discipline in this matter should be less severe and
2 tailored to help Respondent to learn from the incident.

3 Finally, the evidence did not demonstrate that Respondent misrepresented her
4 intention to occupy the property as her primary residence. The testimony by the former
5 deputy real estate commissioner was not persuasive. The more credible evidence of
6 Respondent's intention was her actions in repairing and living at the house and not renting it
7 out to any tenant. The fact that she sold the property less than one year after purchasing it
8 does not necessarily show a contrary intention, for, unlike today's market of foreclosures and
9 declining property values, real estate prices at that time in 2005 were still rising and
10 consumers bought homes with the expectation that they would be able to sell their properties
11 at a profit.

12 ORDER

13 All licenses and licensing rights of Respondent Janina Naomi Garraway under
14 the Real Estate Law are revoked; provided, however, a restricted real estate salesperson
15 license shall be issued to Respondent pursuant to section 10156.5 of the Business and
16 Professions Code if Respondent applies and pays the fee for such license within ninety (90)
17 days after the effective date of the Decision herein. The restricted license issued to
18 Respondent shall be subject to all of the provisions of section 10156.7 of the Business and
19 Professions Code and to the following limitations, conditions and restrictions imposed under
20 the authority of section 10156.6 of said Code:

21 1. The license shall not confer any property right in the privileges to
22 be exercised, and the Real Estate Commissioner may by appropriate order suspend the
23 right to exercise any privileges granted under this restricted license in the event of:

24 (a) The conviction of Respondent (including a plea of nolo
25 contendere) of a crime that is substantially related to
26 respondent's fitness or capacity as a real estate licensee; or

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1 (b) The receipt of evidence that Respondent has violated
2 provisions of the California Real Estate Law, the subdivided
3 lands law, regulations of the Real Estate Commissioner or
4 conditions attaching to this restricted license.

5 2. Respondent shall not be eligible to apply for the issuance of an
6 unrestricted real estate license or the removal of any of the conditions, limitations or
7 restrictions attaching to the restricted license until two years have elapsed from the date
8 of issuance of the restricted license to Respondent.

9 3. Respondent shall submit with any application for license under an
10 employing broker, or any application for transfer to a new employing broker, a statement signed
11 by the prospective employing real estate broker on a form approved by the Department of Real
12 Estate which shall certify:

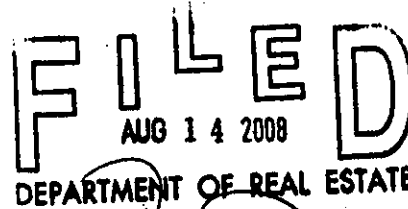
13 (a) That the employing broker has read the Decision of the
14 Commissioner which granted the right to a restricted license; and

15 (b) That the employing broker will exercise close supervision over the
16 performance by the restricted licensee relating to activities for which a real
17 estate license is required.

18 This Decision shall become effective at 12 o'clock noon on March 17, 2009.

19 IT IS SO ORDERED 2/25/09

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21 JEFF DAYI
22 Real Estate Commissioner
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of)
) No. H-33981 LA
)
JANINA NAOMI GARRAWAY,) L-2007080757
)
Respondent.)

NOTICE

TO: JANINA NAOMI GARRAWAY, Respondent, and ALAN J. ROMERO, her
Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated July 11, 2008, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated July 11, 2008, is attached
for your information.

In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case
will be determined by me after consideration of the record herein
including the transcript of the proceedings held on June 13,

///

1 2008, any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of June 13, 2008, at the Los Angeles office of
6 the Department of Real Estate unless an extension of the time is
7 granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: 8/12/08

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15 JEFF DAVI
Real Estate Commissioner

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18 BY: Barbara J. Bigby
19 Chief Deputy Commissioner
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BEFORE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

JANINA NAOMI GARRAWAY,

Respondent.

Case No. H-33981 LA

OAH No. L-2007080757

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on June 13, 2008, in Los Angeles. Complainant was represented by James R. Peel, Staff Counsel. Respondent was present and represented by Alan J. Romero, Attorney at Law.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FINDINGS OF FACT

1. The Administrative Law Judge takes official notice that, on May 18, 2007, the Accusation of Janina Naomi Garraway and Jonathan Derek Long, Case No. H-33981 LA, was made and filed by complainant Janice A. Waddell in her official capacity as a Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department).

2. (A) On or about October 24, 2005, the Department issued real estate salesperson's license no. 01715677 and licensing rights to respondent Janina Naomi Garraway. Her real estate salesperson's license expires on October 23, 2009, unless renewed, and currently is in full force and effect.

(B) On or about July 2, 2007, respondent filed a Notice of Defense, acknowledging receipt of the Accusation and requesting a hearing in order to present a defense to the allegations contained in the Accusation.

3. (A) On or about August 19, 2003, the Department issued real estate salesperson's license no. 01715677 and licensing rights to Jonathan Derek Long.

(B) On May 18 and 27, 2007, the Department served Long with the Accusation and Statement to Respondent by certified mail at his address of record pursuant to Government Code sections 11503 and 11505. Long did not file a notice of defense.

(C) On March 13, 2008, after Long failed to file a Notice of Defense within the time prescribed by Government Code section 11506, the Department issued a Default Order, finding that Long was in default of the Accusation.

(D) On or about May 14, 2008, the Department issued a Decision and Order revoking Long's real estate license and licensing rights pursuant to Government Code sections 11520 and 11505. The Decision became effective on June 9, 2008.

4. (A) At all times relevant herein, Long was a licensed real estate salesperson and employed as a real estate agent by Century 21 Lois Lauer Realty of Fontana.

(B) At all times relevant herein, Deede Thaxton was a licensed real estate salesperson and employed as a real estate agent by Century 21 Lois Lauer Realty of Fontana (Lois Lauer Realty).

5. (A) On or about March 21, 2005, Long acting on behalf of Lois Lauer Realty entered into an agreement to list and/or sell the real property located at 11187 Laurel Avenue, Bloomington (hereinafter also Bloomington house or property). As such, Long was the listing agent and Lois Lauer Realty was the listing real estate brokerage firm.

(B) The Bloomington property was a single family residence situated on an approximately one acre parcel of land in a semi-rural area of San Bernardino County. The owner of the property and seller was William K. Byrne.

6. On an undetermined date prior to March 23, 2005, respondent hired and/or employed Thaxton to act as her real estate salesperson or agent in order to find and buy real estate. At that time, Thaxton was the sister-in-law of respondent's boyfriend. Respondent was 23 years old and single. She was working as a professional dancer and actor and living with her parents and sister in the family home in Colton.

7. (A) On an undetermined date on or before March 23, 2005, respondent was taken by Thaxton and Long to view the Bloomington house, which was approximately 15 minutes from her parents' home. The property had been a long-term rental property, was in poor condition, and needed repairs, but respondent thought that it had "potential."

(B) On March 23, 2005, respondent with the assistance of her real estate agent Thaxton made an offer to buy the Bloomington house for a purchase price of \$425,000 by executing a Residential Purchase Agreement (Exh. 11). Respondent had given a deposit of \$6,000 to her real estate agent Thaxton by providing a personal check made payable to Lois Lauer Realty. Respondent proposed obtaining a first mortgage loan for the purchase in the sum of \$419,000, agreed that the escrow holder would be the escrow division of Lois Lauer Realty, and proposed that the seller pay the cost not to exceed \$400 of a one-year home warranty plan. On March 24, 2005, Byrne as the owner and seller of the Bloomington house accepted respondent's offer. Thaxton of Lois Lauer Realty was respondent's agent and the selling agent. Long of Lois Lauer Realty was the seller's agent and listing agent on this real estate transaction.

(C) On March 29, 2005, the seller Byrne made a counter-offer, indicating that he would not provide a home warranty for the Bloomington house. Respondent accepted the condition of the counter-offer.

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(E) On an undetermined date, respondent and seller with the assistance of their real estate salesperson agents from Lois Lauer Realty opened an escrow at the Escrow Division of Lauer Realty for the sale, purchase, and transfer of the Bloomington house.

(F) On an undetermined date, Wholesale Capital contracted for the appraisal of the Bloomington house. The property was reportedly appraised for at least \$425,000. The appraiser was named in a list of approved appraisers of the lender Greenpoint Mortgage Funding, Inc., of Novato (Greenpoint Mortgage or lender).

8. (A) On or about April 20, 2005, seller Byrne and his real estate agent Long proposed to respondent that, if she agreed to purchase the Bloomington property on an "as is" basis, the seller would pay \$40,000 of the agreed upon sales price of \$425,000 to respondent and respondent could use this sum to pay for the estimated costs to repair and improve the interior and exterior of the property. The Bloomington property was in poor condition and had water drainage problems. Respondent's real estate agent Thaxton was present when the seller and Long

presented this proposal. Respondent also consulted with a certified public accountant before agreeing to the seller's proposal.

(B) Consequently, on April 19, 2005, respondent, the seller Byrne, and Long entered into a Special Addendum to Real Estate Contract (Exh. 9), which was a supplemental disclosure to the escrow for the sale of the Bloomington property. Under this addendum, respondent and the seller agreed that respondent would obtain a loan in the amount of the sales price of \$425,000, that the true sales price or cost basis was \$385,000, and that the seller would transfer \$40,000 to respondent to be used for the repair and improvement of the property. The addendum further provided that, as a matter of consideration, respondent agreed to buy the property on an "as is" basis due to condition of the property and "a history of intermittent water drainage problems." The addendum was prepared by seller Bryne and/or his tax advisor.¹ The Special Addendum was submitted to the escrow division of Lois Lauer Realty and made part of the escrow instructions for the sale and purchase of the Bloomington property. Respondent also advised her mortgage broker McAdoo about the Special Addendum.²

9. On April 20, 2005, the escrow division of Lois Lauer Realty prepared an amended instruction with respect to the escrow for the sale and purchase of the Bloomington house. The amended escrow instruction provided that respondent would obtain a new, conventional first trust deed loan in favor of Greenpoint Mortgage in the principal amount of \$340,000 and a new, conventional second trust deed loan in favor of Wholesale Capital in the principal amount of \$85,000. Respondent signed and agreed to the amended escrow instruction. The amended escrow instruction was filed with the escrow division of Lois Lauer Realty and made part of the escrow instructions for the sale and transfer of the Bloomington property.

10. On April 20, 2005, McAdoo of Wholesale Capital took information from respondent and prepared a Uniform Residential Loan Application (Exh. 4) to obtain a residential mortgage loan for her purchase of the Bloomington house. As set forth in this loan application, the purchase price was \$425,000 and respondent applied for a \$340,000 conventional first mortgage loan. The loan application also stated that respondent was applying for a second or subordinate mortgage of \$85,000. Respondent represented on this loan application that the Bloomington property would be her primary residence and that she intended to occupy the property as her primary

¹ The Special Addendum stated, "For purposes of determining the actual cost basis for the Internal Revenue Service, both buyer and seller hereby confirm the true sale price of said property to be \$385,000.00."

² The evidence was not clear whether the reduction of the sales price and conveyance of \$40,000 to respondent to perform repairs was proposed by the seller as an incentive to buy and repair the property without cost to the seller or was an attempt by the seller to reduce his tax liability from sale of the property.

to the lender that the information provided in the loan application was true and correct as of April 20, 2005.

11. On April 20, 2005, respondent signed and executed a Borrower's Closing Affidavit in which she stated that the Bloomington property was to be her primary residence. By signing the Borrower's Closing Affidavit, respondent acknowledged that the lender Greenpoint Mortgage was granting the loans based on the representations made in the loan application and she certified that all statements related to the loan application had not changed and, to the best of her knowledge, would not change in the foreseeable future.

12. (A) McAdoo and Wholesale Capital submitted respondent's loan application or applications to Greenpoint Mortgage and obtained the first mortgage of \$340,000 as well as the second mortgage of \$85,000 from said lender for respondent's purchase of the Bloomington house. Greenpoint Mortgage relied upon the information contained in the loan application and other documents provided by Wholesale Capital to underwrite and approve the two mortgage loans.

(B) On or about April 26, 2005, Greenpoint Mortgage funded the first and second mortgage loans for respondent's purchase of the Bloomington house and the escrow closed on the real estate transaction. The escrow division of Lois Lauer Realty paid the attendant costs or charges and remitted funds to the respective parties, including \$40,000 that was transferred to respondent's credit union account. The first and second trust deeds were recorded. On May 3, 2005, the escrow division of Lois Lauer Realty prepared a Settlement Statement (Exh. 7).

13. (A) Greenpoint Mortgage funded the two mortgages without having information or knowledge of the Special Addendum and amended escrow instruction that \$40,000 of the loan proceeds was to be transferred to respondent for repairs of the subject property. Prior to funding the loan in April 2005, Greenpoint Mortgage received an estimate settlement statement that indicated the seller would receive \$352,837.13. The final Settlement Statement prepared by the escrow division of Lois Lauer Realty showed that the seller received the loan proceeds less approximately \$40,000. Greenpoint Mortgage would not have made or funded the loans upon the same terms or interest rates if the lender was aware that respondent as the borrower was to receive \$40,000 from the loans because the purchase price of the property would have been deemed less than the loan amounts.

(B) Respondent; her real estate agent Thaxton; the seller's real estate agent Long; the listing and selling real estate company and escrow company Lois Lauer Realty; and the mortgage broker McAdoo of Wholesale Capital; and each of them, knew or should have known of the Special Addendum and the attendant escrow instruction and failed to inform Greenpoint Mortgage about the reduction of the purchase price of the Bloomington property.

(C) It was not established that respondent as the purchaser and borrower, who was represented by Thaxton in the real estate transaction and McAdoo in the loan application process, had a duty or responsibility to ensure that amended escrow instruction was forwarded to the lender.

14. (A) After she purchased the Bloomington house on or about April 26, 2005, respondent evicted the existing tenant from the property. The eviction process took approximately 60 days because the tenant refused to leave after having lived there for 10 years. Thereafter, respondent commenced repairs of the property by painting the house, installing new tile and a counter for the bathroom, installing a new floor in the dining room, upgrading the kitchen, remodeling the patio, and removing weeds and over-grown vegetation.

(B) After purchasing the Bloomington property, respondent moved into the house and lived there. However, she became less enamored of the house after finding a snake on the property, mice droppings in the house, and insects in or about the house. Respondent was not accustomed to living in a semi-rural area. She then decided to sell the house.

(C) In or about January 2006, respondent sold the Bloomington house for \$505,000 after listing the property with a real estate broker. She owned the house for approximately nine months. She did not rent the house to anyone before selling it.

15. (A) On an undetermined date in 2007, the Department received a complaint from the daughter of the seller Byrne that Long had made misrepresentations about the sale of the Bloomington property. The Department opened an investigation of Long and Lois Lauer Realty. During the investigation, a deputy real estate commissioner spoke to respondent on the telephone on one occasion.

(B) On May 18, 2007, the Department issued the Accusation against Long and respondent. After Long was served with the Accusation and failed to file a notice of defense, the Department found him to be in default and issued a Decision and Order revoking Long's real estate license and licensing rights, as described in Findings 1 – 5 above.

(C) The Department revoked Long's real estate salesperson's license for having engaged in conduct which constituted fraud or dishonest dealing in violation of Business and Professions Code section 10177, subdivision (j). The Department found Long made false representations to the lender about the purchase price of the Bloomington property and the buyer's intention of occupying the property.

(D) The whereabouts of Long as well as McAdoo of Wholesale Capital are not known. Long left the employ of Lois Lauer Realty in August 2005. Thaxton now works at another real estate firm in San Bernardino.

16. (A) Based on Findings 1 – 15 above, respondent made a false representation to the lender Greenpoint Mortgage, which was substantial, when she signed the Uniform Residential Loan Application and stated to the lender that the purchase price of the Bloomington house was \$425,000. This information on the loan application was not true and correct and respondent knew that it was not true correct since she had previously signed the Special Addendum and was aware that the purchase price was \$385,000.

(B) Respondent's conduct in misrepresenting the purchase price to the lender was dishonest within the meaning of Business and Professions Code section 10177, subdivision (j), and would have warranted the denial of her original application for a real estate license under Business and Professions Code sections 10177, subdivision (f).

17. (A) It was not established that, in order to induce the lender to provide the required financing, respondent conspired with Long to falsely inform the lender that the purchase price for the Bloomington property was \$425,000 and that respondent intended to occupy the property.

(B) Complainant did not present any evidence of a conspiracy or that respondent conspired with Long to mislead, deceive, or make misrepresentations to the lender Greenpoint Mortgage about the purchase price or her occupancy of the property. As the buyer, respondent was represented by another real estate salesperson, Thaxton, in this transaction. Long represented the seller. No evidence was presented of any other relationship or any discussions between respondent and Long. Long did introduce respondent to the mortgage broker McAdoo who prepared the loan application and submitted the loan documents to the lender.

18. It was not established that respondent made a false representation to the lender that she intended to occupy the Bloomington house or that the house was to be her primary residence. Nor was it established that respondent knew or should have known that the representations she made to the lender that she intended to occupy the property was false. The evidence demonstrated by clear and convincing proof to a reasonable certainty that, when she completed the loan application and Borrower's Closing Affidavit to obtain financing for her real estate purchase, respondent intended to occupy and live at the Bloomington house and that the property was to be her primary residence. She, in fact, did occupy and live at the house. She repaired the house because it was in poor condition. She did not rent it to anyone thereafter. Respondent's testimony that she intended to occupy the house when she applied for the loan and when she purchased the property was credible. On the other hand, the testimony of the former deputy real estate commissioner about a telephone

conversation with respondent was not persuasive in showing her intent, for his testimony on this subject was scant and he did not have a clear recollection of the investigation of this matter.

19. It was not established that the lender Greenpoint Mortgage was damaged financially by this real estate transaction or the approval and funding of the mortgage loans for respondent's purchase of the Bloomington property. As established by the testimony of a litigation paralegal from Greenpoint Mortgage, the lender did not suffer any financial loss by this transaction and attendant loans. Greenpoint Mortgage received full payment on both the first and second mortgage loans that it provided for respondent's real estate purchase.

20. It was not established that respondent demonstrated negligence or incompetence in performing any act for which she is required to hold a license. No evidence was presented that respondent performed any act requiring a real estate license. When she purchased the property, respondent was not a real estate licensee and her real estate agent and mortgage broker performed all activities requiring a license for her.

21. Respondent has been a licensed real estate salesperson for less than three years. She works for real estate broker Homes Reseller on an intermittent basis because she has been busy pursuing her career in the entertainment industry as a dancer and actor. She married in July 2007 and lives with her husband in north Los Angeles County. She has no disciplinary history on her real estate license.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

CONCLUSIONS OF LAW

1. Grounds exist to revoke or suspend respondent's real estate salesperson license under Business and Professions Code section 10177, subdivision (j), in that respondent engaged in conduct which constituted dishonest dealing, based on Findings 2 – 16 above.

2. Grounds exist to revoke or suspend respondent's real estate salesperson license under Business and Professions Code section 10177, subdivision (f), in that respondent acted or conducted herself in a manner that would have warranted the denial of her application for a real estate license, based on Findings 2 – 16 above.

3. Grounds do not exist to revoke or suspend respondent's real estate salesperson license under Business and Professions Code section 10177, subdivision (g), in that it was not established that respondent demonstrated negligence or incompetence in performing any act for which she is required to hold a license, as set forth in Finding 20 above.

4. Discussion—In April 2005, respondent purchased a home after obtaining mortgage loans from the lender. On her loan application, she made a misrepresentation to the lender about the purchase price of the property. The misrepresentation was substantial since the true purchase price was actually \$40,000 less and the lender would not have made its loans if it had known the true purchase price. Respondent's conduct was dishonest and would have warranted the denial of her real estate license that was issued to her in October 2005.

In mitigation of her conduct, respondent was not a real estate licensee when she signed the loan application and was represented by a licensed real estate salesperson in the transaction. Her real estate agent as well as the seller's real estate agent Long, the mortgage broker McAdoo, and the realty-escrow company were all aware of the true purchase price and none of them advised the lender of the true state of affairs. In addition, Greenpoint Mortgage was not financially damaged by its reliance on respondent's representation and its funding of the loans, for the lender was fully paid on its loans. Based on the evidence of mitigation, respondent cannot be said to represent a danger to the public interest and welfare and the appropriate discipline in this matter should be less severe and tailored to help respondent to learn from the incident.

Finally, the evidence did not demonstrate that respondent misrepresented her intention to occupy the property as her primary residence. The testimony by the former deputy real estate commissioner was not persuasive. The more credible evidence of respondent's intention was her actions in repairing and living at the house and not renting it out to any tenant. The fact that she sold the property less than one year after purchasing it does not necessarily show a contrary intention, for, unlike today's market of foreclosures and declining property values, real estate prices at that time in 2005 were still rising and consumers bought homes with the expectation that they would be able to sell their properties at a profit.

* * * * *

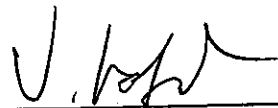
Wherefore, the following Order is hereby made:

ORDER

All real estate licenses and licensing rights of respondent Janina Naomi Garraway shall be suspended for sixty (60) days from the effective date of this Decision, based on Conclusions of Law Nos. 1 – 2 and 4 above, jointly; provided, however, said order of suspension will be completely 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.
2. No final subsequent determination shall 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 Real Estate Commissioner may, in his or her 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 will become permanent.
3. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order the suspension of respondent's license until she passes the examination.

Dated: July 11, 2008



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
)
)
JANINA NAOMI GARRAWAY,)
and JONATHAN DEREK LONG,)
)
Respondents.)

-1-

II

JONATHAN DEREK LONG (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 JONATHAN DEREK LONG was licensed by the Department of Real Estate as a real estate salesperson.

IV

On or about April 6, 2005, Janina Naomi Garraway purchased property located at 11187 Laurel Ave., Bloomington, California.

V

The terms of the purchase required, among other things, that the buyer Garraway obtain a first mortgage loan and a second mortgage loan from Green Point Mortgage Funding, Inc. ("Lender").

VI

During the course of the transaction, in order to induce the Lender to provide the buyer with the required financing, the buyer and Respondent LONG conspired to falsely inform the Lender that the purchase price for the property was \$425,000, and that the buyer intended to occupy the property.

VII

Respondent LONG knew or should have known that the representations made to the Lender were false in that the purchase price for the property was \$385,000, and the buyer had no intention of occupying the property.

VIII

The Lender relied on the representations made by the buyer and Respondent LONG and would not have made the loans if it had known the true facts in this matter.

DETERMINATION OF ISSUES

I

Cause for disciplinary action against Respondent JONATHAN DEREK LONG exists pursuant to Business and Professions Code Section 10177(j).

II

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

The license and license rights of Respondent JONATHAN DEREK LONG under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

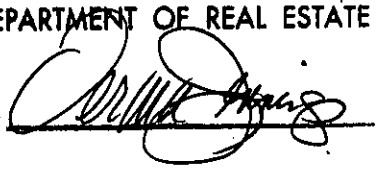
This Decision shall become effective at 12 o'clock noon on June 9, 2008.

DATED: _____

JEFF DAVIS
Real Estate Commissioner

Hand
File

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, CA 90013-1105
5
6 Telephone: (213) 576-6982
7 -or- (213) 576-6913 (Direct)

FILED
MAY 18 2007
DEPARTMENT OF REAL ESTATE
By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-33981 LA
)	
12 JANINA NAOMI GARRAWAY)	<u>A C C U S A T I O N</u>
13 and JONATHAN DEREK LONG,)	
)	
14 Respondents.)	

15 The Complainant, Janice A. Waddell, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against JANINA NAOMI GARRAWAY and JONATHAN DEREK LONG,
18 alleges as follows:

19 I

20 The Complainant, Janice A. Waddell, acting in her
21 official capacity as a Deputy Real Estate Commissioner of the
22 State of California, makes this Accusation against JANINA NAOMI
23 GARRAWAY and JONATHAN DEREK LONG.

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1 II

2 JANINA NAOMI GARRAWAY and JONATHAN DEREK LONG
3 (hereinafter referred to as "Respondents") are presently licensed
4 and/or have license rights under the Real Estate Law (Part 1 of
5 Division 4 of the Business and Professions Code, hereinafter
6 Code).

7 III

8 Respondent JANINA NAOMI GARRAWAY was licensed by the
9 Department of Real Estate of the State of California as a real
10 estate salesperson as of October 24, 2005.

11 IV

12 Respondent JONATHAN DEREK LONG was licensed by the
13 Department of Real Estate as a real estate salesperson on August
14 19, 2003. At all times mentioned herein, Respondent LONG was
15 performing acts requiring a real estate license.

16 V

17 On or about April 6, 2005 Respondent GARRAWAY purchased
18 property located at 11187 Laurel Ave., Bloomington, California.

19 VI

20 The terms of the purchase required, among other things,
21 that Respondent GARRAWAY obtain a first mortgage loan and a
22 second mortgage loan from Green Point Mortgage Funding, Inc.
23 ("Lender").

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VII

During the course of the transaction, in order to induce the Lender to provide Respondent GARRAWAY with the required financing, Respondents GARRAWAY and LONG conspired to falsely inform the Lender that the purchase price for the property was \$425,000 and that Respondent GARRAWAY intended to occupy the property.

VIII

Respondents GARRAWAY and LONG knew or should have known that the representations made to the Lender were false in that the purchase price for the property was \$385,000, and Respondent GARRAWAY had no intention of occupying the property.

IX

The Lender relied on the representations made by Respondents GARRAWAY and LONG and would not have made the loans if it had known the true facts in this matter.

X

The Lender has been damaged financially in this matter in an amount yet to be determined.

XI

The conduct of Respondent GARRAWAY, as alleged above, subjects her real estate license and license rights to suspension or revocation pursuant to Code Section 10177(j).

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XII

The conduct of Respondent LONG, as alleged above, subjects his real estate license and license rights to suspension or revocation pursuant to Code Sections 10177(f), 10177(g) and 10177(j).

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 Respondents JANINA NAOMI GARRAWAY and JONATHAN DEREK LONG 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 18 May 2007


JANICE A. WADDELL
Deputy Real Estate Commissioner

cc: Janina Naomi Garraway
Jonathan Derek Long
Sacto.
Janice A. Waddell
Sergio Andrade