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DEPARTMENT OF REAL ESTATE BY: TANer

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

Jacto

No. H-34718 LA

CALVIN SYLVESTER ASHLEY JR., doing business as Ashley Realty & Investment, Vallerta Financial & Realty, Colbri Real Estate & Financial Services,

Respondent

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on May 12, 2009, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent CALVIN SYLVESTER ASHLEY JR., express admissions; (2) affidavits; (3) Department Audit Report LA 060266; (4) other evidence.

FACTUAL FINDINGS

1.

On February 25, 2008, Maria Suarez made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed by certified mail, to Respondent's last known mailing addresses on file with the Department on February 25, 2008 by certified mail.

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Respondent filed a Notice of Defense within the time required by Section 11506 of the Government Code. A hearing was initially set for June 24, 2008 but was continued to November 12, 2008. Respondent was duly notified of the hearing but failed to appear. Respondent's default was entered herein.

LICENSE HISTORY

3.

At all times mentioned, CALVIN SYLVESTER ASHLEY JR. ("ASHLEY"), was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On January 16, 1986, ASHLEY was originally licensed as a real estate broker. On September 5, 1995, in case number H-25535 LA, ASHLEY's broker license was revoked with right to a restricted broker license. The restricted broker license issued on September 5, 1995, was suspended until October 4, 2005, as more fully set forth below in Finding 9.

LICENSED ACTIVITIES AND BROKERAGE

4.

At all times mentioned, in Panorama City, County of Los Angeles, ASHLEY acted as real estate broker and conducted licensed activities within the meaning of Code Section 10131(d). ASHLEY operated a mortgage and loan brokerage dba Ashley Realty & Investment, Vallerta Financial & Realty, and Colbri Real Estate & Financial Services.

AUDIT EXAMINATION

5.

On August 14, 2007, the Department completed an audit examination of the books and records of ASHLEY, pertaining to the mortgage loan activities described in Finding 4, that require a real estate license. The audit examination covered a period of time beginning on January 1, 2005 to February 28, 2007. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Report LA 060266.

TRUST ACCOUNT

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At all times mentioned, in connection with the activities described in Finding 5, ASHLEY did not maintain a trust account.

VIOLATIONS OF THE REAL ESTATE LAW

7.

With respect to the licensed activities referred to in Finding 4, and the audit examination including the exhibits and workpapers referred to in Finding 5, it is alleged that ASHLEY:

(a) Failed to provide, maintain or retain a true, complete and correct copy of a Department of Real Estate approved Mortgage Loan Disclosure Statement signed by the broker for borrowers Juana Franco, Andrzej Mojsiejuk, Wendy Santoyo, Jose M. Gonzalez, and Sara Rivera, by not disclosing lender rebates in the form of yield spread premiums, in violation of Code Section 10240 and Regulation 2840.

(b) Failed to display ASHLEY's broker license number on the Mortgage Loan Disclosure Statements for the mortgage loans of Juana Franco, Andrzej Mojsiejuk, Lee Kina Om, Wendy Santoyo, and Jose M. Gonzalez, as required by Code Section 10236.4.

(c) Failed to maintain a control record in the form of a columnar record in chronological order of all "Trust Funds Received, Not Placed Broker's Trust Account", in violation of Code Section 10145 and Regulation 2831. ASHLEY did not maintain a columnar record for loan transactions where he collected credit report fees and appraisal fees along with his real estate commission fees earned at the close of escrow.

(d) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, including credit report fees and appraisal fees, as required by Code Section 10145 and Regulation 2831.1; and

(e) Failed to place appraisal fees and credit report fees collected from borrowers into a trust account in the name of the broker as trustee at a bank or other financial institution, in violation of Code Section 10145 of the Code and Regulation 2832(a).

NEGLIGENCE

8.

The overall conduct of Respondent ASHLEY constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondent pursuant to Code Section 10177(g).

PRIOR DEPARTMENTAL ACTION

9.

On August 27, 1993, in Case No. H-25535 LA, an Accusation was filed inter alia against Respondent ASHLEY, that resulted in discipline by stipulated revocation with right to a restricted license including a thirty day suspension of ASHLEY's real estate broker license for violations of Code Sections 10145, 10148, 10159.5, 10176(e), 10176(i), and 10177(d) and Regulations 2830, 2831, 2831.1, 2831.2, and 2832, effective August 8, 1995.

DETERMINATION OF ISSUES

1.

The conduct of Respondent CALVIN SYLVESTER ASHLEY JR., as described in Finding 7, herein above, is in violation of Business and Professions Code ("Code") Sections <u>10240</u>, <u>10236.4</u> and <u>10145</u> and Sections <u>2831</u>, <u>2831.1</u>, <u>2832(a)</u> and <u>2840</u> of Title 10, Chapter 6, California Code of Regulations and is cause for disciplinary action pursuant to Code Sections 10177(d) and 10177(g).

2.

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

ORDER

The real estate broker license and license rights of Respondent CALVIN SYLVESTER ASHLEY JR., under the provisions of Part I of Division 4 of the Business and Professions Code are revoked. ł

This Decision shall become effective at 12 o'clock noon on June 11, 2009 DATED: <u>JEFF DAVI</u> Real Estate Commissioner

| Pepartment of Real Estate 320 West 4th Street, Ste. 350 Los Angeles, California 90013-1105 INV - 8 2009 (213) 576-6982 DEPARTMENT OF REAL ESTATE 37 36 37 37 37 37 37 37 37 37 37 37 37 37 37 | | |
|---|----------------|---|
| 120 West eff. Street, 350 100 Angeles, California 90013-1105 101 Angeles, California 90013-1105 11 Cos Angeles, California 90013-1105 12 (213) 576-5982 DEPARTMENT OF REAL ESTATE 11 BEFORE THE DEPARTMENT OF REAL ESTATE 12 STATE OF CALIFORNIA 13 CALVIN SYLVESTER ASHLEY JR., doing business as Ashley Realty 14 & Investment, Vallerta Financial 15 & Respondents. 13 DEFAULT ORDER 14 DEFAULT ORDER 15 Respondent CALVIN SYLVESTER ASHLEY JR. dba Ashley 16 Respondent CALVIN SYLVESTER ASHLEY JR. dba Ashley 17 Realty, Colbri Real Estate 4 Financial Services, a real estate broker, having failed 16 ouppear at a hearing duly noticed before the Office of Administrative Hearings for November 12, 2008, is now in default. 17 It is so ORDERED My S, MM 18 DEFF DAVI 19 DEFF DAVI 20 DEFF DAVI 21 DEFF DAVI 22 DEFF DAVI 23 DEFF DAVI 24 DEFF DAVI 25 DEFF DAVI 26 DEFF DAVI | | |
| 120 West 4 h Street, 350 100 Angeles, California 90013-1105 101 Normality 102 Angeles, California 90013-1105 111 Control (213) 576-6982 111 DEPARTMENT OF REAL ESTATE 111 DEPARTMENT OF REAL ESTATE 111 DEPARTMENT OF REAL ESTATE 112 DEPARTMENT OF REAL ESTATE 113 DEFORE THE DEPARTMENT OF REAL ESTATE 114 DEPARTMENT OF REAL ESTATE 115 DEFORE THE DEPARTMENT OF REAL ESTATE 116 DEFORE THE DEPARTMENT OF REAL ESTATE 117 DEFORE THE DEPARTMENT OF REAL ESTATE 118 DEFAULT OF DER 119 CALVIN SYLVESTER ASHLEY JR., doing business as Ashley Realty 110 LAUVIN SYLVESTER ASHLEY JR., doing business as Ashley Realty. 114 DEFAULT ORDER 115 Respondents. 116 Realty, Colbri Real Estate 117 Realty & Investment, Vallerta Financial & Realty, and Colbri Real 118 Estate & Financial Services, a real estate broker, having failed 119 Estate & Financial Services, a real estate broker, having failed 110 to appear at a hearing duly noticed before the Office of Administrative Hearings for November 12, 2008, is now in default. 111 tis, therefore, ordered that a default be entered on the record 118 DEFF DAVI 119 DEFF DAVI< | . ⁴ | |
| (213) 576-6982 (213) 576-6982 DEPARTMENT OF REAL ESTATE BY: | 1 | J20 West 4th Street, Ste. 350 |
| 4 Brindbard 5 BEFORE THE DEPARTMENT OF REAL ESTATE 6 BEFORE THE DEPARTMENT OF REAL ESTATE 7 STATE OF CALIFORNIA 8 *** 9 In the Matter of the Accusation of 10 CALVIN SYLVESTER ASHLEY JR., doing business as Ashley Realty 11 & Investment, Vallerta Financial 12 & Financial Services, 13 Respondents. 14 DEFAULT ORDER 15 Respondent CALVIN SYLVESTER ASHLEY JR. dba Ashley 16 Respondent CALVIN SYLVESTER ASHLEY JR. dba Ashley 17 Respondent CALVIN SYLVESTER ASHLEY JR. dba Ashley 18 Respondent CALVIN SYLVESTER ASHLEY JR. dba Ashley 19 Realty & Investment, Vallerta Financial & Realty, and Colbri Real 19 State & Financial Services, a real estate broker, having failed 10 appear at a hearing duly noticed before the Office of 11 Administrative Hearings for November 12, 2008, is now in default. 11 It is, therefore, ordered that a default be entered on the record 11 It is SO ORDERED My 8, 2009 12 JEFF DAVI Real Estate Commissioner | 3 | (212) E76 6002 |
| 6 BEFORE THE DEPARTMENT OF REAL ESTATE 7 STATE OF CALIFORNIA 8 **** 9 In the Matter of the Accusation of Mo. H-34718 LA 10 CALVIN SYLVESTER ASHLEY JR., doing business as Ashley Realty 2 11 & Realty, Colbri Real Estate 2 12 & Realty, Colbri Real Estate 2 13 Respondents. 14 DEFAULT ORDER 15 Respondent CALVIN SYLVESTER ASHLEY JR. dba Ashley 16 Respondent CALVIN SYLVESTER ASHLEY JR. dba Ashley 17 Realty & Investment, Vallerta Financial & Realty, and Colbri Real 18 Estate & Financial Services, a real estate broker, having failed 10 appear at a hearing duly noticed before the Office of Administrative Hearings for November 12, 2008, is now in default. 11 It is, therefore, ordered that a default be entered on the record 11 IT IS SO ORDERED 12 DEFF DAVI 13 TI IS SO ORDERED 14 By: DOLORES WEEKS 15 Regional Manager | 4 | DEPARIMENT OF REAL ESTATE |
| 7 STATE OF CALIFORNIA 8 *** 9 In the Matter of the Accusation of Mon. H-34718 LA 10 CALVIN SYLVESTER ASHLEY JR., doing business as Ashley Realty & Investment, Vallerta Financial & Kealty, Colbri Real Estate & Financial Services, 11 & Realty, Colbri Real Estate & Financial Services, 12 Respondents. 14 DEFAULT ORDER 15 Respondent CALVIN SYLVESTER ASHLEY JR. dba Ashley 16 Respondent S. 17 Estate & Financial Services, a real estate broker, having failed 18 to appear at a hearing duly noticed before the Office of 19 Administrative Hearings for November 12, 2008, is now in default. 11 t is, therefore, ordered that a default be entered on the record 11 in this matter. 12 IT IS SO ORDERED 14 DEFF DAVI 15 Real Estate Commissioner 16 By: DOLORES WEEKS 17 By: DOLORES WEEKS 18 Fegional Manager | 5 | |
| <pre>* *** * In the Matter of the Accusation of</pre> | 6 | BEFORE THE DEPARTMENT OF REAL ESTATE |
| In the Matter of the Accusation of CALVIN SYLVESTER ASHLEY JR., doing business as Ashley Realty & Investment, Vallerta Financial & Realty, Colbri Real Estate & Financial Services, BEFAULT ORDER Respondent CALVIN SYLVESTER ASHLEY JR. dba Ashley Realty & Investment, Vallerta Financial & Realty, and Colbri Real Estate & Financial Services, a real estate broker, having failed to appear at a hearing duly noticed before the Office of: Administrative Hearings for November 12, 2008, is now in default. It is, therefore, ordered that a default be entered on the record in this matter. IT IS SO ORDERED By: DOLORES WEEKS Regional Manager | 7 | STATE OF CALIFORNIA |
| CALVIN SYLVESTER ASHLEY JR., doing business as Ashley Realty & Investment, Vallerta Financial & Realty, Colbri Real Estate & Financial Services, Respondents. | . 8 | * * * |
| <pre>Going business as Ashler Realty & Investment, Vallerta Financial & Realty, Colbri Real Estate & Financial Services, Bespondents. DEFAULT ORDER Respondent CALVIN SYLVESTER ASHLEY JR. dba Ashley Realty & Investment, Vallerta Financial & Realty, and Colbri Real Estate & Financial Services, a real estate broker, having failed to appear at a hearing duly noticed before the Office of Administrative Hearings for November 12, 2008, is now in default. It is, therefore, ordered that a default be entered on the record in this matter. IT IS SO ORDERED My 8, 2009 JEFF DAVI Real Estate Commissioner By: DOLORES WEEKS Regional Manager</pre> | .9 | In the Matter of the Accusation of No. H-34718 LA |
| <pre>11 & Investment, Vallerta Financial & Realty, Colbri Real Estate & Financial Services, 13</pre> | 10 | |
| <pre> & Financial Services,</pre> | 11 | & Investment, Vallerta Financial |
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| <pre>22 in this matter. 23 JEFF DAVI 24 25 26 By: DOLORES WEEKS 26 Regional Manager</pre> | | It is, therefore, ordered that a default be entered on the record |
| 24 25 26 JEFF DAVI Real Estate Commissioner <i>DUMU UUU</i> By: DOLORES WEEKS Regional Manager | | |
| 25 26 By: DOLORES WEEKS Regional Manager | 23 | |
| 26 By: DOLORES WEEKS Regional Manager | 24 | Real Estate Commissioner |
| Regional Manager | 25 | Now you will |
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| 1 | ELLIOTT MAC LENNAN, SBN 66674 |
| 2 | Department of Real Estate |
| 3 | Los Angeles, California 90013-1105 |
| 4 | Telephone: (213) 576-6911 (direct) DEPARTMENT OF REAL ESTATE -or- (213) 576-6982 (office) BY: |
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| 7 | |
| 8 | BEFORE THE DEPARTMENT OF REAL ESTATE |
| 9 | STATE OF CALIFORNIA |
| 10 | * * * |
| 11 | In the Matter of the Accusation of) No. H-34718 LA |
| 12 | CALVIN SYLVESTER ASHLEY JR.,) A C C U S A T I O N |
| 13 | doing business as Ashley Realty) & Investment, Vallerta Financial) |
| 14 · | & Realty, Colbri Real Estate) & Financial Services, |
| 15 | Respondents. |
| 16 |)) |
| 17 | The Complainant, Maria Suarez, a Deputy Real Estate |
| 18 | Commissioner of the State of California, acting in her official |
| . 19 | capacity, for cause of Accusation against CALVIN SYLVESTER ASHLEY |
| 20 | JR. dba Ashley Realty & Investment, Vallerta Financial & Realty, |
| 21 | and Colbri Real Estate & Financial Services, is informed and |
| 22 | alleges as follows: |
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All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations or to the California Financial Code.

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LICENSE HISTORY

2.

At all times mentioned, CALVIN SYLVESTER ASHLEY JR. ("ASHLEY"), was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On January 16, 1986, ASHLEY was originally licensed as a real estate broker.

On September 5, 1995, in case number H-25535 LA, ASHLEY's broker license was revoked with right to a restricted broker license. The restricted broker license issued on September 5, 1995, was suspended until October 4, 2005, as more fully set forth below in Paragraph 9.

LICENSED ACTIVITIES AND BROKERAGE

3.

At all times mentioned, in Panorama City, County of Los Angeles, ASHLEY acted as real estate broker and conducted licensed activities within the meaning of Code Section 10131(d). ASHLEY operated a mortgage and loan brokerage dba Ashley Realty & Investment, Vallerta Financial & Realty, and Colbri Real Estate & Financial Services.

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AUDIT EXAMINATION

| 3 | . 4. |
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| 4 | On August 14, 2007, the Department completed an audit |
| 5 | examination of the books and records of ASHLEY, pertaining to the |
| 6 | mortgage loan activities described in Paragraph 3, that require a |
| 7 | real estate license. The audit examination covered a period of |
| 8 | time beginning on January 1, 2005 to February 28, 2007. The audit |
| 9 | examination revealed violations of the Code and the Regulations |
| 10 | as set forth below, and more fully discussed in Audit Report LA |
| 11 | 060266 and the exhibits and workpapers attached thereto. |
| 12 | TRUST ACCOUNT |
| 13 | 5. |
| 14 | At all times mentioned, in connection with the |
| 15 | activities described in Paragraph 4, ASHLEY did not maintain a |
| 16 | trust account. |
| 17 | VIOLATIONS OF THE REAL ESTATE LAW |
| 18 19 | 6. |
| 20 | With respect to the licensed activities referred to in |
| 21 | Paragraph 3, and the audit examination including the exhibits and |
| 22 | workpapers referred to in Paragraph 4, it is alleged that ASHLEY: |
| 23 | (a) Failed to provide, maintain or retain a true, |
| | complete and correct copy of a Department of Real Estate approved |

Mortgage Loan Disclosure Statement signed by the broker for borrowers Juana Franco, Andrzej Mojsiejuk, Wendy Santoyo, Jose M. Gonzalez, and Sara Rivera, by not disclosing lender rebates in

- 3

1 form of yield spread premiums, in violation of Code Section 10240
2 and Regulation 2840.

(b) Failed to display ASHLEY's broker license number on
the Mortgage Loan Disclosure Statements for the mortgage loans of
Juana Franco, Andrzej Mojsiejuk, Lee Kina Om, Wendy Santoyo, and
Jose M. Gonzalez, as required by Code Section 10236.4.

7 (c) Failed to maintain a control record in the form of 8 a columnar record in chronological order of all "Trust Funds 9 Received, Not Placed Broker's Trust Account", in violation of 10 Code Section 10145 and Regulation 2831. ASHLEY did not maintain 11 a columnar record for loan transactions where he collected credit 12 report fees and appraisal fees along with his real estate 13 commission fees earned at the close of escrow.

(d) Failed to maintain a separate record for each
beneficiary or transaction, thereby failing to account for all
trust funds received, including credit report fees and appraisal
fees, as required by Code Section 10145 and Regulation 2831.1;
and

(e) Failed to place appraisal fees and credit report fees collected from borrowers into a trust account in the name of the broker as trustee at a bank or other financial institution, in violation of Code Section 10145 of the Code and Regulation 2832(a).

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| 1 | DISCIPLINARY STATUTES AND REGULATIONS |
| 2 | 7. |
| 3 | The conduct of Respondent ASHLEY described in Paragraph |
| 4 | 6, above, violated the Code and the Regulations as set forth: |
| 5 | PARAGRAPH PROVISIONS VIOLATED |
| 6 . | 6(a) Code Section 10240 and Regulation 2840 |
| 7 | |
| 8 | 6(b) Code Section 10236.4 |
| 9 | |
| 10 | 6(c) Code Section 10145 and Regulation 2831 |
| . 11 | o(c) code section 10145 and Regulation 2651 |
| . 12 | |
| 13 . | 6(d) Code Section 10145 and Regulation 2831.1 |
| 14 | |
| 15 | |
| 16 17 | 6(e) Code Section 10145 and 2832(a) |
| 18 | Each of the foregoing violations constitute cause for the |
| 19 | suspension or revocation of the real estate license and license |
| 20 | rights of Respondent ASHLEY under the provisions of Code Sections |
| 21 | 10177(d) and/or 10177(g). |
| 22 | NEGLIGENCE |
| 23 | 8. |
| 24. | The overall conduct of Respondent ASHLEY constitutes |
| , Ż5 | negligence or incompetence. This conduct and violation are cause |
| . 26 | for the suspension or revocation of the real estate license and |
| . 27 | license rights of Respondent pursuant to Code Section 10177(g). |
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PRIOR DEPARTMENTAL ACTION

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On August 27, 1993, in Case No. H-25535 LA, an 3 Accusation was filed inter alia against Respondent ASHLEY, that 4 resulted in discipline by stipulated revocation with right to a 5 restricted license including a thirty day suspension of ASHLEY's 6 real estate broker license for violations of Code Sections 10145, 7 8 10148, 10159.5, 10176(e), 10176(i), and 10177(d) and Regulations 9 2830, 2831, 2831.1, 2831.2, and 2832, effective August 8, 1995. 10 WHEREFORE, Complainant prays that a hearing be 11 conducted on the allegations of this Accusation and that upon 12 proof thereof, a decision be rendered imposing disciplinary 13 action against the license and license rights of Respondent 14 CALVIN SYLVESTER ASHLEY JR., under the Real Estate Law (Part 1 of 15 Division 4 of the Business and Professions Code) and for such 16 other and further relief as may be proper under other applicable 17 provisions of law. 18 19 Dated at Los Angeles, California this 25th day of Albrean 2008. 20 21 22 23 Deputy Real Ēs ate Commissioner 24 25 cc: Calvin Sylvester Ashley Maria Suarez 26 Sacto Audits - Darryl Thomas 27 - 6