

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

Respondent .

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

In the Matter of the Accusation Against:

STUART GWYNN LEWIS,

Respondent.

Case No. H-34938 LA

OAH No. 20080780076

PROPOSED DECISION

The hearing in the above-captioned matter was held on November 21, 2008, at Los Angeles, California, before Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings. Complainant was represented by James Peel, Counsel, Department of Real Estate. Respondent appeared with his attorney, Sammy Henein.

Thereafter, evidence was received, but the case was held open for the submission of post-hearing briefs. Respondent submitted a letter brief on November 26, 2008. That brief, timely received, is marked as Exhibit B. Complainant did not file a brief, despite the opportunity to do so, nor did she make any objection to the court record that is appended to Exhibit B, of which the ALJ will take official notice. The matter was therefore submitted for decision on December 15, 2008. The following factual findings, legal conclusions, and orders are hereby made by the ALJ.

FACTUAL FINDINGS

1. Complainant Robin Trujillo, Deputy Real Estate Commissioner, Department of ~~Insurance~~ ^{Real Estate} (Department), filed the Accusation in the above-captioned ~~matter~~ ^{Real Estate} in her official capacity.
2. Respondent Stuart Gwynn Lewis was licensed as a real estate salesperson by the Department from June 23, 2003 until September 14, 2006. Respondent's salesperson's license was cancelled on September 13, 2006, and the Department issued him a broker's license, number 01392612, the next day. Respondent's broker's license is valid through September 13, 2010.
3. From approximately November 2005 through January 2006, Respondent held himself out as the Chief Executive Officer (CEO) of the firm Status Holdings, LLC. According to the written contracts that Respondent later executed on behalf of

that firm with Igor Edelman, which transactions provide the basis for this proceeding, Status Holdings was in the business of investment banking. According to the minutes of the Superior Court proceeding between Respondent, Status Holdings, Mr. Edelman, and others, Status Holdings was a suspended corporation. (See Exhibit B.)

4. At some time prior to November 2005, Igor Edelman (Edelman), an individual residing in southern California, was searching for a business that he could purchase. He learned that a printing company, DiFatta Graphics, Inc. might be for sale, from a broker. Another broker, Mr. Hull, referred Edelman to Respondent.

5. On November 9, 2005, Respondent executed a "Broker Agreement" and separate "Loan Packaging/Advisory/Consulting Service Agreement" with Igor Edelman. (Exhibits 3 and 4.) In executing the agreements, Respondent purported to act as the CEO of Status Holdings. Edelman paid Respondent \$5,000 in connection with the Loan Packaging agreement.

6. By the Broker Agreement, Mr. Edelman engaged Status Holdings as its "non-exclusive funding agent for the limited purpose . . . of procuring funding from bonafide lenders or investors . . . for the purpose of completing any combination of the acquisition targets . . . identified in this agreement." (Ex. 3.) There is no evidence that Respondent held himself out as a licensed broker to Mr. Edelman.

7. On February 16, 2006, Edelman signed a written agreement to purchase the printing company for 1.8 million dollars. That transaction was facilitated by an escrow firm, and the sale was completed on April 13, 2006. The closing statement provided that \$45,000 was to be held as commission to Status Holdings; a much larger sum was paid to the seller's broker.

8. The testimony in this proceeding establishes that Respondent was engaged to do more than locate financing for Edelman so that his purchase of the printing company would be facilitated. Respondent, acting under the aegis of Status Holdings, acted as Edelman's agent throughout the bulk of the transaction. However, as of March 15, 2006, he affiliated his sales license with America West Lenders Express, Inc., and had that affiliation at the time that escrow closed.

9. Before the transaction could be completed, Edelman learned that Respondent was not licensed as a broker, and he raised the issue. A dispute broke out between Respondent and Edelman; hence the commission due Status Holdings was

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not paid at the close of escrow. Litigation was instituted, and ultimately Edelman retained the \$45,000 he would have paid to Respondent as a commission, and Respondent refunded the \$5,000 paid by Edelman in connection with the financing agreement.¹ He also incurred the cost of an attorney to represent him in the civil proceeding.

10. Prior to entering into the transaction with Edelman, Respondent sought the counsel of an attorney, a family friend, regarding whether he needed a broker's license in order to sell a business, as opposed to a parcel of real estate. He was advised, incorrectly, that he did not need a broker's license.

11. Respondent has no other disciplinary record. He is currently self-employed. During the hearing he made it clear that he had learned a hard lesson from the entire experience, and based on his testimony and his demeanor while testifying, he appears unlikely to violate the Real Estate Law in the future. As noted above, he took steps to affiliate himself with a broker before the transaction was completed, and he thereafter obtained his broker's license. Edelman was not damaged in the transaction, in that he obtained what he described as a successful business.

LEGAL CONCLUSIONS

1. (A) Pursuant to Business and Professions Code sections 10130 and 10131, subdivisions (a) and (d),² Respondent was required to hold a real estate brokers license in order to act on behalf of Edelman in his efforts to acquire a business, or to acquire financing for the purchase of that business.

(B) Section 10131, subdivision (a) provides that a real estate broker is a person who, for compensation or the expectation of compensation, "... solicits prospective sellers or purchasers of, ... or negotiates the purchase, sale or exchange of ... a business opportunity." Here, Respondent entered into an agreement whereby he would negotiate the purchase of a business opportunity for Edelman. (Factual Findings 4 through 8.)

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¹ It appears from Exhibit B that Respondent sued Edelman for his commission, but Edelman prevailed on a demurrer (a legal defense) because Respondent could not sue in the name Status Holdings because he had not properly registered it as a fictitious name, and because it was a suspended corporation. His lack of licensure was not, apparently, the bar to his collection of a commission.

² All further statutory references are to the Business and Professions Code, unless otherwise noted.

(C) Section 10130, subdivision (d) defines a real estate broker to include those who solicit borrowers or lenders or who negotiates loans. The record establishes that Respondent undertook to obtain a loan for Edelman, and thus he was required to have a broker's license. (Factual Findings 4 through 8.)

2. (A) Cause has been established to discipline Respondent's license pursuant to section 10177, subdivisions (d), based on Legal Conclusion 1 and its factual predicates.

(B) The record establishes that Respondent acted as a broker without holding a broker's license. He was acting as Edelman's broker when the client entered into a transaction valued at 1.8 million dollars. As such, it can be found that he willfully disregarded or violated the Real Estate Law (section 10000 et. seq.).

3. Cause has not been established to discipline Respondent's license pursuant to section 10177, subdivision (j), in that it was not established that Respondent engaged in dishonest or fraudulent conduct. It was not established, as alleged, that Respondent misrepresented himself as licensed. (See Accusation, ¶ IV; Factual Finding 6.) The record establishes that Respondent relied on the advice of an attorney, regarding his obligation to hold a broker's license in order to act in the purchase of a business, as opposed to the purchase of real property. (Factual Finding 10.) As such, a fraudulent or dishonest act has not been established.

4. (A) The fact that Respondent affiliated with a broker prior to the close of escrow does not provide a defense in this proceeding. Respondent cited authority, primarily *In Re Estate of Lopez* (1992) 8 Cal.App.4th 317 (*Lopez*), to the effect that if an unlicensed person entered into a contract to act as a broker, and thereafter obtained a license before the commissions were to be paid, then that person could collect a broker's commission, despite the general statutory bar against an unlicensed broker collecting compensation. Ultimately, the authority is not apposite.

(B) *Lopez* required application of section 10136, which provides that if a person acting in the capacity of a real estate broker brings an action for compensation for acting as a broker, they must allege and prove that they were duly licensed when their cause of action arose. In the *Lopez* case, the contract provided that a commission was to be paid at a time certain, when the transaction was consummated. While deeds were recorded when the plaintiff did not hold a license, the monies were not disbursed from escrow until after the plaintiff had obtained a license. Thus, the Court of Appeal concluded that the plaintiff was a broker when the cause of action "arose," and hence the commissions were not barred.

(C) Such a rule might have allowed Respondent to collect his fee in this case, if the contract had been in his name, or a properly registered fictitious name, rather than in the name of a corporation. However, section 10136 pertains to civil actions, and their accrual, and it does not control section 10177, subdivision (d), as it

intersects with sections 10130 and 10131. Section 10177, subdivision (d), allows the Commissioner to discipline a licensee for violations of the Real Estate Law. Here Respondent, a licensee at all times, violated a portion of the Real Estate Law—section 10130—by acting as a broker when he only held a sales license. Simply put, as a licensee of one stripe, Respondent could not enter into contracts requiring a different sort of stripe, without violating sections 10130 and 10177, subdivision (d); he violated the law at the time he entered into the transaction, and he is therefore subject to discipline.

5. In mitigation, Respondent acted on advice of an attorney in determining that he could go forward with representation. However, as a licensee, he should have understood the requirement that one brokering a "business opportunity" be licensed by the Commissioner as a broker. Further, in mitigation, the client was not actually harmed; he is operating what he described at the hearing as a successful business, and he did not have to pay for any of Respondent's assistance. Respondent has no record of disciplinary action prior to this proceeding.

6. The purposes of proceedings of this type are to protect the public and not to punish the licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Based on all the foregoing, it appears that Respondent is unlikely to violate the statutes and regulations that govern his profession in the future. The following order is appropriate for the public protection, in that it will discourage further transgressions by Respondent, and other licensees, in the future.

ORDER

All licenses and licensing rights of Respondent Stuart G. Lewis under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Decision, provide, however, that the suspension term shall be stayed for one (1) year upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties, and responsibilities of a real estate licensee in the State of California; and,

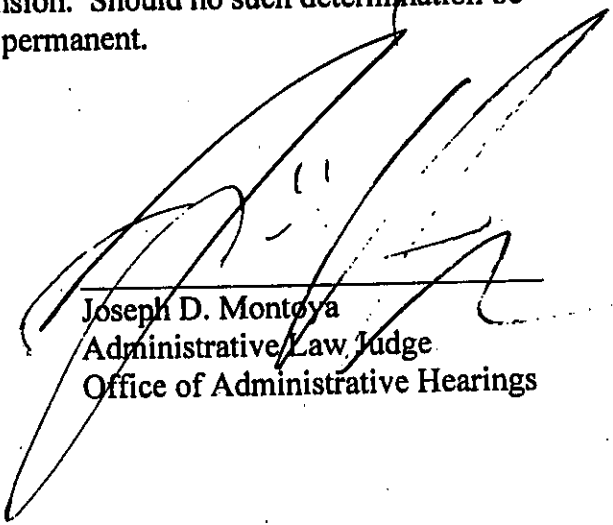
2. That no final subsequent determination shall be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his or her discretion, vacate and set aside the stay order and

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reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

July 14, 2009



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

SACD.
Flag

JAMES R. PEEL, Counsel (SBN 47055)
Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, CA 90013-1105

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

FILED
MAY 15 2008
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-34938 LA
	)	
	)	<u>A C C U S A T I O N</u>
STUART GWYNN LEWIS,	)	
	)	
	)	
Respondent.	)	

The Complainant, Robin L. Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against STUART GWYNN LEWIS, alleges as follows:

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The Complainant, Robin L. Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against STUART GWYNN LEWIS.

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1 II

2 STUART GWYNN LEWIS (hereinafter referred to as
3 "Respondent") is presently licensed and/or has license rights
4 under the Real Estate Law (Part 1 of Division 4 of the Business
5 and Professions Code, hereinafter Code).

6 III

7 Respondent was licensed by the Department of Real
8 Estate of the State of California as a real estate salesperson
9 from June 23, 2003, to September 14, 2006, when the license was
10 cancelled. Respondent obtained his broker license effective
11 September 14, 2006.

12 IV

13 During November and December, 2005, and January, 2006,
14 Respondent misrepresented himself to Igor Edelman (hereinafter
15 "Buyer") as a real estate broker dba Status Holdings.

16 V

17 During this time period, Respondent while acting for or
18 in expectation of compensation, solicited the Buyer to purchase a
19 business opportunity known as DiFatta Graphics, Inc., a
20 commercial printing company, and thereafter negotiated the sale
21 of the business from the owner Laurence Handley to the Buyer.

22 VI

23 The conduct of Respondent required a real estate broker
24 license per Section 10131(a) of the Code.

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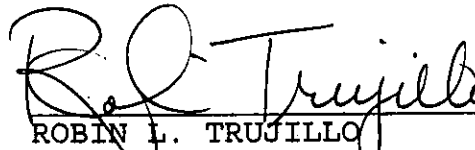
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VII

The conduct of Respondent, as alleged above, was in violation of Code Section 10130, and subjects his real estate license and license rights to suspension or revocation pursuant to Code Sections 10177(d) 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 Respondent STUART GWYNN LEWIS 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 17 day of March, 2008.


ROBIN L. TRUJILLO
Deputy Real Estate Commissioner

cc: Stuart Gwynn Lewis
Robin L. Trujillo
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