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FILED
DEC 16 2009
DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-35399 LA
DYNAMIC BROKERS, INC., and RAMON) L-2009020713
ESTRADA DURAN, Individually and as)
Designated Officer of the Corporation,) Respondents.

DECISION AFTER REJECTION

The matter came on for hearing before Sophie C. Agopian, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on June 9, 2009.

James R. Peel, Counsel, represented the Complainant. Respondent RAMON ESTRADA DURAN was present and represented himself and Respondent DYNAMIC BROKERS, INC.

Oral and documentary evidence was received and the matter was submitted for decision on June 9, 2009.

On July 9, 2009, the Administrative Law Judge rendered a Proposed Decision, which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the Government Code of

1 the State of California, Respondent was served with notice of my
2 determination not to adopt the Proposed Decision of the
3 Administrative Law Judge along with a copy of said Proposed
4 Decision. Respondent was notified that the case would be
5 decided by me upon the record, the transcript of proceedings
6 held on June 9, 2009, and upon any written argument offered by
7 Respondent and Complainant.

8 I have given careful consideration to the record in
9 this case including the transcript of the proceedings of June 9,
10 2009.

11 The Factual Findings and Conclusions of Law in
12 Proposed Decision dated July 9, 2009, of the Administrative Law
13 Judge of the Office of Administrative Hearings are hereby
14 adopted.

15 The Order shall be as follows:

16 ORDER

17 1. All licenses and licensing rights of Respondents
18 DYNAMIC BROKERS, INC. and RAMON ESTRADA DURAN, individually, and
19 as designated officer of the corporation, under the Real Estate
20 Law are suspended for a period of five (5) days from the
21 effective date of this Decision; provided, however, that said
22 five (5) day suspension shall be stayed for one (1) year upon
23 the following terms and conditions:

24 (a) Respondents shall obey all laws, rules and
25 regulations governing the rights, duties and responsibilities
26 of a real estate licensee in the State of California; and

27 ///

1 (b) That no final subsequent determination be made,
2 after hearing or upon stipulation, that cause for disciplinary
3 action occurred within one (1) year of the effective date of this
4 Decision. Should such a determination be made, the Commissioner
5 may, in his discretion, vacate and set aside the stay order and
6 reimpose all or a portion of the stayed suspension. Should no
7 such determination be made, the stay imposed herein shall become
8 permanent.

9 2. Pursuant to Section 10148 of the Business and
10 Professions Code, Respondents DYNAMIC BROKERS, INC. and RAMON
11 ESTRADA DURAN (jointly or severally) shall pay the Commissioner's
12 reasonable cost for: (a) the audit which led to this disciplinary
13 action and, (b) a subsequent audit to determine if Respondents
14 have corrected the trust fund violations found in the Legal
15 Conclusions. In calculating the amount of the Commissioner's
16 reasonable cost, the Commissioner may use the estimated average
17 hourly salary for all persons performing audits of real estate
18 brokers, and shall include an allocation for travel costs,
19 including mileage, time to and from the auditor's place of work
20 and per diem.

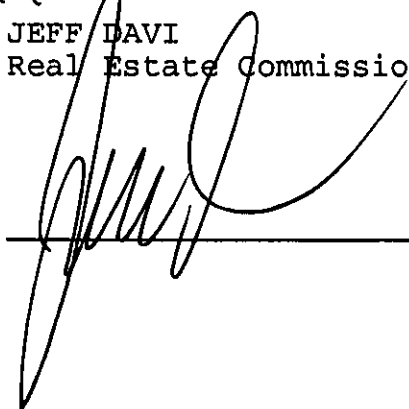
21 Respondents shall pay such cost within sixty (60)
22 days of receiving an invoice from the Commissioner detailing
23 the activities performed during the audit and the amount of
24 time spent performing those activities. The Commissioner may
25 suspend Respondents' license and license rights, pending a
26 hearing held in accordance with Section 11500, et seq., of the
27 Government Code, if payment is not timely made as provided for

1 herein, or as provided for in a subsequent agreement between the
2 Respondents and the Commissioner. The suspension shall remain in
3 effect until payment is made in full or until Respondents enter
4 into an agreement satisfactory to the Commissioner to provide for
5 payment, or until a decision providing otherwise is adopted
6 following a hearing held pursuant to this condition.

7 This Decision shall become effective at 12 o'clock
8 noon on January 5, 2010.

9 IT IS SO ORDERED 11-24, 2009.

10 JEFF DAVI
11 Real Estate Commissioner



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AUG 25 2009

DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

DYNAMIC BROKERS, INC., and
RAMON ESTRADA DURAN,
Individually and as Designated Officer
of the Corporation,

Respondents.

No. H-35399 LA

L-2009020713

NOTICE

TO: DYNAMIC BROKERS, INC., and RAMON ESTRADA, Respondents.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 9, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 9, 2009, 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 9, 2009, any written argument hereafter submitted on behalf of Respondent and Complainant.

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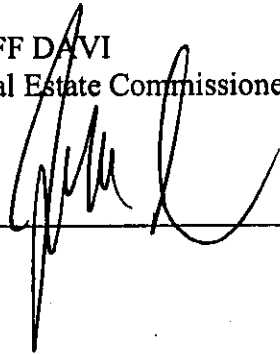
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Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of June 9, 2009, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

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

DATED: 8-19-09

JEFF DAVI
Real Estate Commissioner



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

In the Matter of Accusation Against:

**DYNAMIC BROKERS, INC.,
and RAMON ESTRADA DURAN,**
individually, and as designated officer
of the corporation,

Respondents.

Case No. H-35399 LA

OAH No. 2009020713

PROPOSED DECISION

This matter was heard by Sophie C. Agopian, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 9, 2009, in Los Angeles.

James R. Peel, Real Estate Counsel, represented Complainant, Robin L. Trujillo, Deputy Real Estate Commissioner of the California Department of Real Estate (Department). Ramon Estrada Duran (Respondent Duran) was present and represented himself. Respondent Duran, who is the designated officer of Dynamic Brokers, Inc. (Respondent DBI), also represented Respondent DBI. (Respondent Duran and Respondent DBI are sometimes collectively referred to herein as "Respondents.")

Oral and documentary evidence was received. The matter was submitted for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. On October 20, 2008, Complainant brought the Accusation in her official capacity. Respondents timely filed a joint Notice of Defense on Accusation, and this hearing ensued.
2. At all times relevant, Respondent Duran was a licensed real estate broker. At all times relevant, Respondent DBI was licensed as a corporate real estate broker with Respondent Duran as its designated officer.

3. The Accusation was filed against Respondent Duran, individually, and as the designated officer of Respondent DBI.

4. At all times relevant, Respondents acted as real estate brokers and engaged in licensed activities within the meaning of Business and Professions Code¹ section 10131, subdivision (a), and broker escrow activities under the exception set forth in Financial Code section 17004, subdivision (a)(4).

5. On June 26, 2008, an audit was completed of Respondents' books and records related to residential sales and broker escrow activities from February 1, 2005, through and including January 31, 2008. The auditor, Isabel Beltran, General Auditor II, testified thoroughly and credibly about the audit process, and her findings, as contained in an audit report. Her audit revealed the following:

(a) The trust account, maintained for broker activity, was short \$1,645.19 due to an overdraw of \$1,200 and \$445.19 in bank fees;

(b) The control record for the trust account was inaccurate and incomplete because it had no ending balances that were readily traceable to perform the reconciliation between the control and separate records;

(c) A signatory on the trust account was not employed by, or licensed to, DBI;

(d) A monthly reconciliation of the trust fund records was not performed; and

(e) An earnest money deposit was held beyond the next three business days after the offer was accepted and without written authorization from the principal.

6. Respondents did not dispute the audit report findings, but offered the following uncontroverted evidence of mitigation:

(a) With respect to Factual Finding 5 (a), the trust account shortage, was, in part, the result of bank errors. The bank erroneously cashed an expired \$1,200 check, and then erroneously imposed service charges on the account in the amount of \$445.19. Respondent took responsibility for the error and deposited \$1,200 from his personal account into the trust account to cover part of the shortage. The bank fees were eventually reversed by the bank due to the bank's error.

¹ All further statutory references are to the Business and Professions Code unless otherwise indicated.

(b) With respect to Factual Findings 5 (b) and (d), the trust account control records were not accurate, complete or reconciled on a monthly basis because they were outsourced, and an old program was used. Respondent Duran is now using the forms recommended by the auditor, and these records are now correctly maintained.

(c) With respect to Factual Finding 5 (c), Respondent's son, Ramon G. Duran, was no longer employed by DBI, but remained a signatory on the trust account as the result of an "oversight." He has not signed any checks since he left the company, and after the audit, has been removed from the card.

(d) With respect to Factual Finding 5 (e), Respondent was not aware of the file identified by the audit, but Respondent attributed the incident of holding an earnest money deposit longer than the next three business days to "market conditions." He testified that he handles a large volume of bank foreclosures and shortsales, where the sellers are the banks. He generally maintains an authorization form from the bank, signed by the principals, which allows him to hold deposits if needed.

7. In further mitigation, Respondent Duran cooperated with the audit process, and took corrective actions based upon the auditor's recommendation. Respondent Duran also submitted a letter to the Department responding to the concerns of the audit. The evidence does not establish that the public has been harmed in any way as a result of Respondents' conduct.

8. As a factor in aggravation, on September 7, 1995, both Respondents had their licenses publicly reprovved as the result of matters alleged in an Accusation filed against them. Respondent DBI was Respondent Duran, each, were alleged to have mishandled a client trust fund. Respondent Duran does not deny the allegations, but explained that the underlying conduct was a result of human error.

9. Respondents have been in business for approximately 30 years. At the time of the audit, DBI employed 56 licensed salespeople. Respondent Duran's wife is employed as the secretary of the company. Due to the dropping real estate market, DBI lost the building where it maintained its office, and the company may soon close. Respondent Duran may also lose his home. Respondent Duran takes pride in his reputation in his community and the real estate business. He has served for many years on the Montebello Board of Realtors, including Board President for three terms. He also served as a State Director, and was elected as the Regional Chairman for Triboard. He also served as a Commissioner for the City of Montebello's Civil Service Commission and the Parks and Recreation Commission. He has a son who will continue in the business when he retires.

LEGAL CONCLUSIONS

1. Cause exists to discipline the licensing rights of Respondents pursuant to section 10177, subdivisions (d) and (g), because Respondents violated section 10145, subdivision (a), and California Code of Regulations, title 10 (10 CCR) section 2832.1 by allowing a client trust account to fall short without written consent. (Factual Findings 5 (a) and 6.)

2. Cause exists to discipline the licensing rights of Respondents pursuant to section 10177, subdivisions (d) and (g), because Respondents violated 10 CCR section 2831 by not maintaining accurate and complete control records for a client trust account. (Factual Findings 5 (b) and 6.)

3. Cause exists to discipline the licensing rights of Respondents pursuant to section 10177, subdivisions (d) and (g), because Respondents violated 10 CCR section 2834 by allowing an improper signatory on the trust account. (Factual Findings 5 (c) and 6.)

4. Cause exists to discipline the licensing rights of Respondents pursuant to section 10177, subdivisions (d) and (g), because Respondents violated 10 CCR section 2831.2 by not performing monthly reconciliation of the trust fund records. (Factual Findings 5 (d) and 6.)

5. Cause exists to discipline the licensing rights of Respondents pursuant to section 10177, subdivisions (d) and (g), because Respondents violated 10 CCR section 2832 by holding an earnest money deposit for a transaction beyond the next three business days after the offer was accepted, without written authorization from the principal. (Factual Findings 5 (e) and 6.)

6. Cause exists to discipline Respondent Duran's license pursuant to section 10177, subdivision (h), because Respondent Duran failed to exercise reasonable supervision and control of the activities of Respondent DBI for which a real estate license is required. (Factual Findings 2, 5 and 7.)

7. Evidence of mitigation, including Respondents' nearly 30 years of undisciplined licensure, with one exception, and active involvement in the community and real estate business, was considered in determining the appropriate discipline. Based on Factual Findings 7 and 9, it would not be contrary to the public interest to allow Respondents to retain their real estate broker licenses. However, a stayed suspension is appropriate.


ORDER

All licenses and licensing rights of Respondents Dynamic Brokers, Inc., and Ramon Estrada Duran, individually, and as designated officer of the corporation, under the Real Estate Law are suspended for a period of five (5) days from the effective date of this Decision; provided, however, that five (5) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondents 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 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 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 shall become permanent.

DATED: July 9, 2009


SOPHIE C. AGOPIAN
Administrative Law Judge
Office of Administrative Hearings

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not adopted

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

FILED
OCT 20 2008
DEPARTMENT OF REAL ESTATE
[Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-35399 LA
12)
13) A C C U S A T I O N
14) DYNAMIC BROKERS, INC.,)
15) and RAMON ESTRADA DURAN,)
16) individually, and as)
17) designated officer of)
18) the corporation,)
19) Respondents.)

19 The Complainant, Robin L. Trujillo, a Deputy Real
20 Estate Commissioner of the State of California, for cause of
21 accusation against DYNAMIC BROKERS, INC.; and RAMON ESTRADA
22 DURAN, individually, and as designated officer of Dynamic
23 Brokers, Inc., alleges as follows:

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I

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 DYNAMIC BROKERS, INC., and RAMON ESTRADA DURAN.

II

DYNAMIC BROKERS, INC., and RAMON ESTRADA DURAN (hereinafter referred to as "Respondents") are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter Code).

III

At all times herein mentioned, Respondent DYNAMIC BROKERS, INC. was licensed as a real estate broker with Respondent RAMON ESTRADA DURAN as its designated officer. Respondents previously had their broker license publicly reprovved as a result of the Decision in case No. H-26074 LA effective Sept. 7, 1995.

IV

At all times material herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(a) of the Code, and broker escrow activity under the exception set forth in Financial Code Section 17004(a)(4).

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1 V

2 On or about June 26, 2008, the Department completed an
3 examination of Respondent DYNAMIC BROKERS, INC.'s books and
4 records, pertaining to the activities described in Paragraph IV
5 above, covering a period from Feb. 1, 2005, through January 31,
6 2008, which examination revealed violations of the Code and of
7 Title 10, Chapter 6, California Code of Regulations (hereinafter
8 Regulations) as set forth below.

9 VI

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

16 VII

17 In the course of activities described in Paragraphs IV
18 through VI and during the examination period described in
19 Paragraph V, Respondents DYNAMIC BROKERS, INC., and RAMON ESTRADA
20 DURAN acted in violation of the Code and the Regulations as
21 follows, and as more specifically set forth in Audit Report Nos.
22 LA 070254 and LA 070291 and related exhibits:

23 1. Violated Section 10145(a) of the Code and
24 Regulation 2832.1 in that as of January 31, 2008, the broker's
25 trust account contained a shortage of \$1,645.19.

26 2. Violated Regulation 2831 in that the control record
27 for the trust account was inaccurate and incomplete. The records

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondents
5 DYNAMIC BROKERS, INC.; and RAMON ESTRADA DURAN, individually,
6 and as designated officer of Dynamic Brokers, Inc., under the
7 Real Estate Law (Part 1 of Division 4 of the Business and
8 Professions Code) and for such other and further relief as may be
9 proper under other applicable provisions of law.

10 Dated at Los Angeles, California
11 this 8 day of October, 2008.

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14 
15 ROBIN L. TRUJILLO
16 Deputy Real Estate Commissioner
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22 cc: Dynamic Brokers, Inc.
23 Ramon Estrada Duran
24 Robin L. Trujillo
25 Audit Section
26 Sacto.
27