

FILED

OCT 22 2009

DEPARTMENT OF REAL ESTATE
BY: Laura B. Deon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
LINDA J. DANCY,) NO. H-35493 LA
Respondent.) L-2009020708

ORDER DENYING RECONSIDERATION

On August 28, 2009, a Decision was rendered in the above-entitled matter, effective September 23, 2009. The Decision revoked the real estate broker license of Respondent LINDA J. DANCY. Pursuant to Respondent's request, the effective date of the Decision was stayed, and the Decision now becomes effective on October 23, 2009.

On September 22, 2009, Respondent petitioned for reconsideration of the Decision of August 28, 2009.

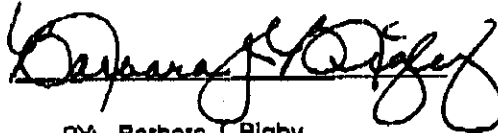
1 I have given due consideration to the petition of
2 Respondent. I find no good cause to reconsider the Decision
3 of August 28, 2009, and reconsideration is hereby denied.

4 IT IS SO ORDERED

10/21/09

5 JEFF DAVI

6 Real Estate Commissioner

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8 BY: Barbara J. Bigby
9 Chief Deputy Commissioner

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FILED

SEP 22 2009

DEPARTMENT OF REAL ESTATE
BY: James B. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-35493 LA
) L-2009020708
LINDA J. DANCY,)
)
Respondent(s).)

ORDER STAYING EFFECTIVE DATE

On August 28, 2009, a Decision was rendered in the above-entitled matter to become effective September 23, 2009.

IT IS HEREBY ORDERED that the effective date of the Decision of August 28, 2009, is stayed for a period of 30 days to allow Respondent LINDA J. DANCY to file a petition for reconsideration.

The Decision of August 28, 2009, shall become effective at 12 o' clock noon on October 23, 2009.

DATED: September 22, 2009

JEFF DAVI

Real Estate Commissioner

By: Dolores Weeks

DOLORES WEEKS

Regional Manager

FILED

SEP - 3 2009

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: Laura B. Allen

* * * *

In the Matter of the Accusation of) No. H-35493 LA
LINDA J. DANCY,) L-2009020708
Respondent(s).)
_____)

DECISION

The Proposed Decision dated August 5, 2009, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock
noon on SEP 23 2009.

IT IS SO ORDERED

8/28/09

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LINDA J. DANCY,

Respondent.

Case No. H-35493 LA

OAH No. 2009020708

PROPOSED DECISION

This matter was heard by Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, on June 11, 2009, in Los Angeles, California.

Martha J. Rosett, staff counsel, represented complainant Deputy Real Estate Commissioner Robin Trujillo.

Respondent Linda J. Dancy represented herself.

Complainant seeks to discipline respondent's real estate broker's license based on an order of the Corporations Commissioner barring respondent from employment, management, or control of any escrow agent. Respondent did not dispute the order, but offered evidence in mitigation and rehabilitation.

Oral and documentary evidence was presented at the hearing. The record was left open for the filing of written closing argument. Complainant filed closing argument on June 26, 2009, which document has been marked for identification as Exhibit 4. Respondent filed her closing argument on July 6, 2009, which document has been marked for identification as Exhibit A. The matter was submitted for decision on July 6, 2009.

FINDINGS OF FACT

1. Complainant made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.
2. Respondent has held a real estate broker's license since February 7, 2003; it expires on July 7, 2012, unless renewed. Before becoming a real estate broker, respondent held a real estate salesperson license, which was issued in approximately 1994, and terminated on February 6, 2003.

3. Respondent became the broker of record for Jedco International, Inc. (Jedco) on November 17, 2003; she became the broker of record for Loujon Management, Inc. (Loujon) on January 18, 2007. Both real estate corporations are located at 4000 Barranca Parkway, suite 250, in Irvine, California. As the officer-broker over Jedco and Loujon, respondent is responsible for the supervision and control of the activities conducted on behalf of the two real estate corporations.

4. At all times pertinent hereto, respondent was the president, secretary, treasurer, sole director and shareholder of Tracoursales.net Escrow (Trac Escrow), an escrow agent licensed by the Department of Corporations.

5. On May 10, 2007 pursuant to a settlement agreement with the Department of Corporations in Office of Administrative Hearings case number L2006120468, Department of Corporations file number 963-2186 (the settlement), respondent's escrow agent license was revoked, and respondent was barred, effective July 9, 2007, from any position of employment, management, or control of any escrow agent.

6. Respondent, as part of the settlement, stipulated to the following facts:

a. On April 23, 2003, respondent's husband, J. Dancy, was convicted of wire fraud in a case brought by the United States Attorney General. J. Dancy was prohibited, for a 10-year period from the date of the conviction, from serving in any capacity as an officer, director, stockholder, trustee, agent, or employee of an escrow agent or in any position involving any duties with an escrow agent in California. J. Dancy's real estate license was revoked by the California Department of Real Estate on December 17, 2004.

b. When respondent applied to be the escrow agent for Trac Escrow, she was required to complete a statement of identity and questionnaire, and provide fingerprints, for all persons participating in the escrow business.

c. A complete statement of identity and employment application, along with fingerprints (SIE), is required within ten days for all persons seeking employment with an escrow agent.

d. Respondent did not complete a statement of identity and questionnaire, with accompanying fingerprints, or an SIE, for J. Dancy to participate in the Trac Escrow business.

e. On August 5, 2005, the California Corporations Commissioner, acting upon a complaint against Trac Escrow, conducted a special examination of Trac Escrow (special examination).

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f. The special examination determined that J. Dancy was managing the operations of Trac Escrow. This determination was based upon the following observations made during the special examination:

- J. Dancy introduced himself to the special examiner, using the name Jim Riedmuller, and stated he was the director of operations for Trac Escrow.
- Employees of Trac Escrow consulted with J. Dancy during the course of the special examination when Trac Escrow personnel were asked for information and documentation.
- Escrow files showed that customers of Trac Escrow referred to J. Dancy, under the assumed name of Jim Riedmuller, as vice-president and owner of Trac Escrow.

g. Respondent knowingly violated California Financial Code sections 17209, 17212.1, 17414.1 and/or 17419 by allowing J. Dancy to hold a position with Trac Escrow, and failing to inform the California Corporations Commissioner of this fact.

h. The special examination found that Trac Escrow failed to maintain its books and records as required under the escrow law.

i. Trac Escrow violated California Code of Regulations, title 10, section 1738.2 by closing some escrows without having received all the funds required by the escrow instructions.

j. The special examination determined that Tracyour sales.net (Trac Your Sales), an affiliate of Trac Escrow, was located on the same premises as Trac Escrow, and that Trac Your Sales employees had easy access to the books and records of Trac Escrow, including Trac Escrow's escrow funds.

k. Trac Your Sales operated as an escrow coordination service. The escrow coordination services provided by Trac Your Sales included acquiring real estate disclosure statements, verifying signatures of parties to a real estate transaction, ordering reports, scheduling inspections, and viewing of documentation needed for the processing of a real estate purchase and sale transaction. The costs of the escrow coordination services provided by Trac Your Sales for escrows handled by Trac Escrow were included in the escrow fees charged by Trac Escrow.

l. The Trac Your Sales employees were found to be engaging in escrow processing services.

m. As of November 29, 2005, only three of the 16 employees of Trac Your Sales were identified to the California Corporations Commissioner.

n. The special examination concluded that Trac Escrow did not have safeguards in place to protect its trust funds, escrow books, and escrow records from access by the employees of Trac Your Sales.

o. Trac Escrow did not have a person stationed at its licensed location that met the experience requirements of Financial Code section 17200.8. As of August 3, 2006, Trac Escrow had not identified to the California Corporations Commissioner the four escrow officers listed on its website.

7. The Department of Corporations made the following express finding of violation of law against respondent in its order barring respondent from holding any position of employment, management, or control of any escrow agent: "Trac Escrow and [respondent], by allowing J. Dancy to hold a position with Trac Escrow and by further failing to inform the Commissioner of this information, violated California Financial Code sections 17209, 17212.1, 17414.1 and/or 17419. There can be no question that such violations were knowing on the part of Respondents."

8. The settlement provided, at paragraph 2: "It is the intent and understanding between the parties that this Settlement Agreement, and particularly the admissions of Trac Escrow and [respondent], shall not be binding or admissible against Trac Escrow and/or [respondent] in any action(s) brought against Trac Escrow and/or [respondent] by third parties."

9. The settlement provided, at paragraph 9: "The parties further acknowledge and agree that nothing contained in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any other agency, (county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such agency against Trac Escrow and [respondent] or any other person based upon any of the activities alleged in this matter or otherwise."

10. According to respondent, she entered the settlement because she could not afford to pay an attorney to prepare for and represent her during a hearing. Respondent also asserts she had already decided to close the escrow company.

11. Respondent voluntarily entered the settlement, and was represented by an attorney at the time of the settlement.

12. The acts for which respondent was disciplined by the California Corporations Commissioner would constitute grounds for discipline if committed by a real estate licensee.

13. Respondent acknowledged that Riedmuller is respondent's maiden name. Respondent admitted that J. Dancy, on occasion, used the name Jim Riedmuller. Respondent

explained that her husband used the other name because local realtors do not want to do business with other real estate agents, regardless of their professional reputation.

14. After the August 2005 special examination, respondent changed the configuration of her office to separate Trac Escrow from the other business activities taking place at the office. The escrow manager, escrow files, and escrow assistant were located in a separate office, which had a locked door. Respondent also hired a qualified escrow manager to operate the escrow business. Respondent asserts that she fixed the record keeping problems that were revealed by the special examination. She contends that a 2008 audit of Trac Escrow by the Department of Real Estate showed there were no problems with the handling of funds. The audit was not submitted in evidence.

15. At hearing, respondent denied that J. Dancy was managing the operations of Trac Escrow. Respondent asserted that Trac Your Sales, although located at the same premises as Trac Escrow, was a separate business which respondent created to increase efficiency in closing her real estate transactions. Respondent also denied, at hearing, that she failed to disclose required information to the California Corporations Commissioner. Respondent contends she was not required to disclose J. Dancy because he did not work for Trac Escrow in any capacity at any time. Respondent believes that, even though Trac Escrow and Trac Your Sales were located at the same premises, she had safeguards in place to protect Trac Escrow funds, books, and records because the escrow manager and escrow files were housed in a separate office on the premises, which was locked when the escrow manager was not present.

16. Respondent expressed remorse that she was not able to continue operating the Trac Escrow business. She also acknowledged that she made "mistakes" in the operation of Trac Escrow. Respondent did not, however, express true remorse for her conduct, or fully acknowledge her violations of law.

17. Respondent has been married to J. Dancy for 16 years. She is the stepmother to J. Dancy's four children. She has five grandchildren. She is active in her family members' lives and in her church.

18. Respondent for the past three years has been working solely as a real estate agent and broker for transactions where she has represented one of the parties to the sale. Respondent expressed willingness to submit to audits if the Commissioner feels this would protect the public. Respondent asserts that she takes real estate seriously and that she has integrity in her representation of clients in real estate sales transactions. Respondent would, at a minimum, like to continue working as a real estate agent.

CONCLUSIONS OF LAW

1. Cause exists to discipline respondent's real estate broker license, pursuant to Business and Professions Code section 10177, subdivision (f), in that respondent's escrow agent license was revoked for acts that, if done by a real estate licensee, would be grounds

for discipline of a California real estate licensee, as set forth in factual finding numbers 1-18, and legal conclusion number 2.

2. Business and Professions Code section 10177 states in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee . . . who . . . has done any of the following:

[¶] . . . [¶]

(f) Acted or conducted . . . herself in a manner that would have warranted the denial of . . . her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked . . . for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act . . . and only upon an express finding of a violation of law by the agency or entity.

3. Respondent's stipulations to facts in the settlement agreement with the Department of Corporations constitute admissions that are admissible in this proceeding. (Evid. Code, § 1220.) A stipulation of fact made by a litigant in one proceeding may be used as a judicial admission against the same litigant in another proceeding. (*Fibreboard Paper Products Corp. v. East Bay Union of Machinists* (1964) 227 Cal.App.2d 675, 706-713.)

4. Respondent argues that the provision in the settlement, as set forth in factual finding number 8, prohibits the use of the settlement, and particularly the use of respondent's admissions, in this proceeding. In raising this argument, respondent ignores the provision in the settlement, as set forth in factual finding number 9, that the settlement could be used to assist another agency with an administrative action against Trac Escrow or respondent. The terms of the settlement, contrary to respondent's contention, foresee and permit for its use in this administrative proceeding.

The Legislature intended that discipline by one agency could lead to discipline by another. (Bus. & Prof. Code, § 10177, subd. (f).) Respondent's escrow license was revoked pursuant to her settlement with the California Corporations Commissioner. She was also barred from any position of employment, management, or control of any escrow agent. It would be anomalous to allow complainant to take action against respondent if her case had proceeded to a hearing with the Department of Corporations but to prohibit such action

because her case was resolved through a settlement. Respondent's argument is therefore not persuasive.¹

5. Respondent was represented by counsel and voluntarily entered into the settlement with the California Corporations Commissioner. Respondent was given notice of the charges and had an opportunity for a hearing in the prior proceeding. The California Corporations Commissioner made an express finding, as set forth in factual finding number 7, that respondent knowingly violated the law. The California Corporations Commissioner, based upon a settlement agreement, revoked respondent's escrow agent's license and barred her from any position of employment, management, or control of any escrow agent. In so doing, respondent admitted that a special examination of Trac Escrow revealed the following facts: (1) that her husband, who was prohibited from working in any capacity involving any duties with an escrow agent in California as a result of his fraud conviction, was managing the operations of Trac Escrow; (2) Trac Escrow failed to maintain its books and records as required under the escrow law; (3) escrow files were closed without sufficient funds; and (4) an affiliated company was sharing office space with Trac Escrow with no safeguards in place regarding the Trac Escrow trust funds and/or escrow books and records.

6. At the instant hearing, respondent asserted that she entered the settlement with the California Corporations Commissioner in order to avoid incurring additional debt. According to respondent, she had already decided to close the escrow business. Respondent denied, at the hearing, that she engaged in misconduct in her escrow business. Respondent asserted, at the hearing, that her husband did not manage or otherwise participate in her escrow business. Respondent admitted that some books and records were not maintained as required. She contends that she fixed the problem. Respondent asserted at the hearing that there were sufficient funds for closing escrows. The problem, according to respondent, was with the record keeping. Respondent also asserted at the hearing that she adequately safeguarded the escrow funds, books, and records by locating the escrow files and trust funds in a separate office from the other business on the premises. The admissions made by respondent in her settlement with the California Corporations Commissioner are found, however, to be more reliable than her testimony at the instant hearing.

7. The objective of a disciplinary proceeding is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in real estate professionals. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1030-1031.)

8. As cause exists for discipline against respondent's license, respondent bears the burden of establishing her reformation. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.) Other than her own testimony, respondent did not offer any independent evidence of her rehabilitation.

¹ The facts which respondent stipulated to in the settlement agreement with the Department of Corporations would also be admissible in this proceeding as prior inconsistent statements. (Evid. Code, § 1235.)

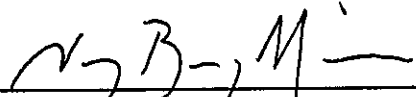
9. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

10. Respondent's actions which led to the settlement with the California Corporations Commissioner were serious, and directly related to her licensed activities. Respondent shows no signs of remorse. She has not acknowledged her wrongdoing in the actions that led to the revocation of her escrow license. Respondent did not offer any evidence that might justify any method of discipline other than license revocation. She has not established her rehabilitation.

ORDER

All licenses and licensing rights of respondent Linda J. Dancy under the Real Estate Law are revoked.

Date: August 5, 2009



Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings

facto

FILED
DEC - 2 2008
DEPARTMENT OF REAL ESTATE

MARTHA J. ROSETT, Counsel (SBN 142072)
Department of Real Estate
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Los Angeles, CA 90013-1105

James B. Olson

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-35493 LA
)	
LINDA J. DANCY,	) <u>A C C U S A T I O N</u>
)	
Respondent.	)
)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against LINDA J. DANCY (hereinafter "Respondent"), is informed and alleges as follows:

1.

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

At all times herein mentioned Respondent was and is licensed and/or has license rights under the Real Estate Law

1 (Part 1 of Division 4 of the Business and Professions Code) as a
2 real estate broker. Respondent was first licensed by the
3 Department as a broker on or about February 7, 2003.

4 3.

5 Respondent is the officer-broker designated pursuant
6 to Business and Professions Code Section 10159.2 to be
7 responsible for the supervision and control of the activities
8 conducted on behalf of two licensed real estate corporations,
9 Jedco International Inc. and Loujon Management Inc., to ensure
10 compliance with the real estate law.

11 4.

12 At all times material herein, Respondent was the sole
13 shareholder and president of Tracoursales.net Escrow, an escrow
14 agent licensed by the California Department of Corporations.

15 5.

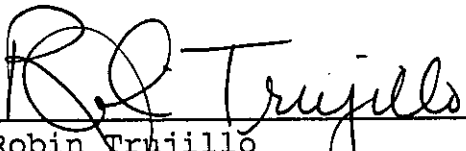
16 On or about May 10, 2007, effective July 9, 2007, in
17 Department of Corporations Case No. 963-2186, the California
18 Corporations Commissioner revoked the escrow agent's license of
19 Tracoursales.net Escrow and issued an order barring Respondent
20 DANCY from any position of employment, management or control of
21 any escrow agent. The grounds for discipline included
22 violations of the Financial Code and Title 10 of the California
23 Code of Regulations, including failure to supervise the
24 activities of the escrow corporation to ensure compliance with
25 the escrow laws, failure to disclose material information, and
26 actively concealing the true identity of corporate employees and
27 individuals who had access to trust funds.

6.

The Order of the Corporations Commissioner barring Respondent from employment, management or control of any escrow agent, constitutes cause for the revocation or suspension of Respondent's real estate license and/or license rights pursuant to Business and Professions Code Section 10177(f).

WHEREFORE, the 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/or license rights of Respondent, LINDA J. DANCY, under the Real Estate Law and for such other and further relief as may be proper under applicable provisions of law.

Dated at Los Angeles, California
this 26 day of November, 2008.


Robin Trujillo
Deputy Real Estate Commissioner

cc: Linda J. Dancy
Robin Trujillo
Sacto.