

72013

FILED

DEC 21 2009

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: 

* * * * *

In the Matter of the Accusation of)
)
JOHN ANTHONY LOPEZ,)
)
Respondent.)

No. H-35926 LA
L-2009061196

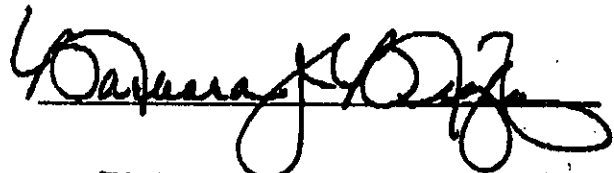
DECISION

The Proposed Decision dated November 17, 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 January 11, 2010.

IT IS SO ORDERED 12-17-09

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JOHN ANTHONY LOPEZ,

Respondent.

Case No.: H-35926 LA

OAH No.: 2009061196

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on October 28, 2009.

Cheryl D. Keily, Staff Counsel, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, brought the Accusation in her official capacity. On Complainant's motion the First Cause of Accusation was stricken from the Accusation.

2. John Anthony Lopez, Respondent herein, is presently licensed and license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate broker. At all times material herein, Respondent was 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 Business and Professions Code section 10131.

Failure to Maintain Business and Mailing Address

3. At the time of the filing of the Accusation the business address and mailing address maintained by Respondent with the Department is 11847 Gorham Avenue, Suite 313, Los Angeles, California 90049. At the time of the filing of the Accusation Respondent was no longer located at this address nor at the time of the filing of the Accusation had Respondent informed the Real Estate Commissioner of any new address.

4. At a time known to Respondent, but unknown to the Department, Respondent left and/or abandoned his business and mailing address, as set forth in Finding 3, and thereafter, Respondent failed to maintain on file with the Commissioner of the Department a new address for the principal place of business for his real estate brokerage activities. For a period of time known to Respondent, but unknown to the Department, Respondent failed to maintain a definite place of business.

5. Respondent's failure to notify the Department was a negligent failure and not a willful failure.

Mitigation

6. Respondent has not been active under his license for a number of years. After suffering financial hardships he was unable, financially, to secure a permanent, stable address either for business purposes or for personal purposes. Those circumstances do not excuse Respondent's failure to maintain a mailing address but do mitigate same.

7. Within the last few weeks Respondent has given notice to the Department of a new address for any of his real estate brokerage activities. That address is: 5323 North Valentine, Fresno, CA 93720.

LEGAL CONCLUSIONS

Applicable Authority

1. These proceedings are brought under the provisions of section 10100, Division 4 of the Business and Professions Code of the State of California and sections 11500 through 11528 of the Government Code.

2. Business and Professions Code section 10162 provides in pertinent part:

Every licensed real estate broker shall have and maintain a definite place of business in the State of California which shall serve as his office for the transaction of business. This office shall be the place where his license is displayed and where personal consultations with clients are held.

- - -

3. California Code of Regulations, title 10, section 2715 provides:

Every broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his principal place of business for brokerage activities, the address of each branch business office and his current mailing address, if different from the business address.

Every broker who is acting in the capacity of salesperson to another broker under written agreement shall maintain on file with the commissioner the address of the business location where he expects to conduct most of the activities for which a license is required and his current mailing address.

A real estate salesperson shall maintain on file with the commissioner his current mailing address, and when applicable, the address of the principal business office of the broker to whom the salesperson is at the time licensed.

Whenever there is a change in the location or address of the principal place of business or of a branch office of a broker, he shall notify the commissioner thereof not later than the next business day following the change.

This section shall apply to the holder of a real estate license who fails to renew it prior to the period for which it was issued and who is otherwise qualified for such license as set forth in section 10201 of the Code.

Violations

4. Respondent has violated said Code section 10162 and said Regulation 2715 by reason of Findings 3, 4 and 5 and therefore cause exists pursuant to Business and Professions Code sections 10165 and 10177, subdivision (g) for discipline of Respondent's license.

Licensing Considerations

5. The objective of an administrative proceeding relating to licensing is to protect the public interest. Such proceedings are not for the primary purpose of punishment: *Fahmy v. MBC* (1995) 38 Cal.App.4th 810; 817; *Ex Parte Brounsall* (1778) 2 Cowp. 829, 98 Eng.Rep. 1385. During the pendency of this proceeding Respondent has come in compliance with Code section 10162 and Regulation 2715 and by virtue of the instant hearing has been made aware of the Department's insistence, in the public interest, that all licensees maintain a business and mailing address and keep the Department informed of same. A stayed suspension for a period of time, to insure compliance, is consistent with the public interest.

ORDER

All licenses and licensing rights of Respondent John Anthony Lopez under the Real Estate Law are suspended for a period of ninety days from the effective date of this Decision; provided, however, that all ninety days of said suspension shall be stayed for one 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 be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one 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: December 17, 2009


RICHARD J. LOPEZ

Administrative Law Judge

Office of Administrative Hearings

RJL:rfm

1 CHERYL D. KEILY SBN# 94008
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6905

FILED

MAY - 6 2009

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- 35926 LA
12)
13 JOHN ANTHONY LOPEZ,) A C C U S A T I O N
14 Respondent.)

15
16 The Complainant, Robin Trujillo, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against JOHN ANTHONY LOPEZ, (hereinafter "Respondent"), is
19 informed and alleges as follows:

20 1.

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

24 2.

25 Respondent is presently licensed and/or has license
26 rights under the Real Estate Law (Part 1 of Division 4 of the
27

1 Business and Professions Code, hereinafter "Code"), as a real
2 estate broker.

3 3.

4 At all times material herein, Respondent was engaged
5 in the business of, acted in the capacity of, advertised or
6 assumed to act as a real estate broker in the State of
7 California, within the meaning of Code Section 10131.

8 FIRST CAUSE OF ACCUSATION

9 (Use of Unauthorized Fictitious Business Name)

10 4.

11 Complainant hereby incorporates by reference the
12 allegations set forth in Paragraphs 1 through 3, above.

13 5.

14 At a time within the last three years Respondent used
15 a fictitious business name, "PropCo Properties," for activities
16 requiring the issuance of a real estate license without filing
17 an application for the use of such name with the Department of
18 Real Estate ("Department") as required by the provisions of Code
19 Section 10159.5 and Section 2731(a) of Title 10, Chapter 6,
20 California Code of Regulations ("Regulations").

21 6.

22 The conduct, acts and/or omissions of Respondent, as
23 set forth in Paragraph 5, above, violate Code Section 10159.5
24 and Section 2731(a) of the Regulations, and are cause for the
25 suspension or revocation of the licenses and license rights of
26 Respondent pursuant to Code Sections 10177(d) and/or 10177(g).
27

1
2 SECOND CAUSE OF ACCUSATION

3 (Failure to Maintain Business and Mailing Address)

4 7.

5 Complainant hereby incorporates by reference the
6 allegations set forth in Paragraphs 1 through 6, above.

7 8.

8 The current business address and mailing address
9 maintained by Respondent with the Department is 11847 Gorham
10 Avenue, Suite 313, Los Angeles, California 90049. Respondent is
11 no longer located at this address nor has Respondent informed
12 the Real Estate Commissioner of any new address.

13 9.

14 At a time known to Respondent, but unknown to the
15 Department, Respondent left and/or abandoned his business and
16 mailing address, as set forth in Paragraph 8, above; and
17 thereafter, Respondent failed to maintain on file with the
18 Commissioner of the Department a new address for the principal
19 place of business for his real estate brokerage activities, in
20 violation of Code Section 10162 and Section 2715 of the
21 Regulations.
22

23 10.

24 The conduct, acts and/or omissions of Respondent, as
25 set forth above, are cause for the suspension or revocation of
26 the licenses and license rights of Respondent pursuant to Code
27 Sections 10165, 10177(d), and/or 10177(g).

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 the licenses and license rights of Respondent
5 JOHN ANTHONY LOPEZ under the Real Estate Law, and for such other
6 and further relief as may be proper under other applicable
7 provisions of law.

8 Dated at Los Angeles, California

9 this 5 day of May, 2009.

10
11
12
13 
14 Robin Trujillo
15 Deputy Real Estate Commissioner
16
17
18
19
20
21
22
23
24

25 cc: JOHN ANTHONY LOPEZ
26 Robin Trujillo
27 Sacto.