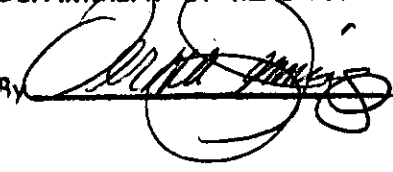


FILED
JUL 30 2010
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By 

* * * * *

In the Matter of the Accusation of) No. H-36080 LA
) OAH #2009120397
BRYAN RAUL RICHARDSON,)
dba Express Mortgage,)
)
Respondent.)
_____)

DECISION

The Proposed Decision dated June 17, 2010, 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.

Pursuant to Section 11517(c)(2) of the Government Code of the State of California, the Proposed Decision, page 4, Legal Conclusions paragraph 2, line 7, "ant" is amended to read "at".

This Decision shall become effective at 12 o'clock noon on AUG 19 2010.

IT IS SO ORDERED 7-19-10.

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 Against:

BRYAN RAUL RICHARDSON,
dba Express Mortgage,

Respondent.

Case No. H-36080

OAH No. 2009120397

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles California on May 27, 2010.

James R. Peel, Real Estate Counsel, represented complainant.

Edward O. Lear, Attorney at Law, represented Bryan Raul Richardson (respondent), who was present.

Testimonial and documentary evidence was received, the case argued and the matter submitted for decision on May 27, 2010. The Administrative Law Judge makes the following Findings, Legal Conclusions and Order.

FACTUAL FINDINGS

1. Complainant Robin L. Trujillo made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. The Department of Real Estate (department) initially issued to respondent a real estate salesperson on November 26, 1986 and a real estate broker license on November 2, 1999. Respondent's real estate broker license expired March 15, 2008, and was renewed late on October 2, 2008. Respondent's real estate broker license is due to expire on October 1, 2012, unless renewed.

3. At all times relevant herein, respondent engaged in the business of, and acted in the capacity of, a real estate broker for compensation, or in expectation of compensation, within the State of California. Respondent conducted his real estate business under the fictitious name of Express Mortgage.

4. Complainant seeks to revoke respondent's real estate licenses and license rights based on allegations that: (1) respondent was at the center of a fraud for profit scheme; and (2) respondent failed to retain documents and records in violation of the real estate law. At hearing respondent denied these allegations.

Mortgage Loan Applications

5. In 2006, respondent's mother, Carolyn Byrle Richardson (Ms. Richardson), was employed as a lead patient service associate performing desk receptionist duties and assisting the marketing coordinator at Heritage Victor Valley Medical Group. Ms. Richardson's gross monthly salary from her employment at Heritage Victor Valley was approximately \$3,000.

6. Ms. Richardson wanted to acquire vacation rental property. On October 31, 2006, she acquired property located at 895 Knight Avenue, Big Bear Lake, California (the Knight property).

7. On January 2, 2007, Ms. Richardson acquired property located at 39380 North Shore Drive, Fawnskin, California (the Fawnskin property).

8. Through Express Mortgage and its agents, respondent prepared Uniform Residential Loan Applications for Ms. Richardson's acquisition of the Knight and Fawnskin properties. According to respondent, he "did everything," including providing information and "figures" requested by lenders and escrow agents on these transactions. The loan applications for both the Knight and Fawnskin properties contained misrepresentations of material facts which respondent knew or reasonably should have known were untrue. In order to boost his mother's ability to obtain loans, he factored his own commission-based salary as well as the anticipated, but not yet realized, rental income from the Knight and Fawnskin properties into the calculation of a false monthly salary reported for Ms. Richardson on the loan applications.

9. The Uniform Residential Loan Application respondent prepared in connection with the Knight property falsely stated Ms. Richardson's monthly salary as \$40,000, and listed her occupation as "marketing director." Based on the information provided in the Knight loan application, BNC Mortgage Inc. funded loans for Ms. Richardson totaling \$625,000, from which respondent received a \$1,598 origination fee; a \$17,750 brokerage fee; and a \$15,625 commission.

10. The Uniform Residential Loan Application respondent prepared in connection with the Fawnskin property falsely stated Ms. Richardson's monthly salary as \$30,000, and listed her occupation as "marketing director." In addition, the Knight property was omitted from a schedule of real estate owned by Ms. Richardson even though at the time of the loan application she had already acquired it. As a consequence, the loan application misrepresented to prospective lenders the full extent of her outstanding debt obligations. Based on the information provided in the Fawnskin loan application, ACE Mortgage

Funding, LLC funded loans for Ms. Richardson totaling \$617,500, from which respondent received a \$24,460 origination fee as well as a \$42,000 commission.

11. Respondent testified that he made four mortgage payments on the Knight property and three mortgage payments on the Fawnskin property. On dates not specified at hearing or in the documentary evidence, Ms. Richardson defaulted on her mortgage obligations for both the Knight and Fawnskin properties to the detriment of the mortgagees. On October 9, 2007, the Knight property was sold at a public auction. On November 7, 2007, the Fawnskin property was sold at a public auction.

12. During the brief period within which Ms. Richardson owned the Knight and Fawnskin properties, respondent made improvements and repairs to them. Respondent testified that he “had to deck them out to have a good vacancy factor.” He purchased furniture, appliances, and utensils. He installed carpeting. He built a deck.

13. Respondent testified that he tried to keep up with the payments on the mortgages for the Knight and Fawnskin properties but that the recent collapse of the mortgage business in general prevented him from doing so. He testified that in retrospect he “wouldn’t do a stated income loan again . . . wouldn’t have followed the bank’s lead.” He claimed that his “judgment was clouded as a result of stressful circumstances.” He was going through “a personal break up, trying to keep business going, trying to get the [vacation] cabins ready for the holidays, [and that he was] pulled in different directions at the same time.”

14. Several character witnesses testified favorably at hearing about respondent’s work ethic, honesty, and integrity.

Retention of Records

15. On March 10, 2009, Samuel Delgado, a Deputy Real Estate Commissioner, subpoenaed respondent’s transaction files containing all records, papers, books, accounts and documents relating to the Knight and Fawnskin properties.

16. In an undated letter, respondent indicated that he could not locate his files pertaining to the properties. Respondent claimed that the subpoenaed files were either moved from his garage or “discarded with a bunch of old files.” Respondent failed to produce for examination, inspection and copying the documents he is obligated, pursuant to Business and Professions Code section 10148, subdivision (a), to retain for three years.¹

¹ Respondent provided the department with contact numbers to escrow companies which ultimately provided the department with the requested documents. That sort of cooperation with the department, however, provides no exemption from respondent’s statutory duties.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10148 provides in pertinent part:

(a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.

[¶] . . . [¶]

2. Business and Professions Code section 10176 provides in pertinent part:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license ~~and~~^{at} any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

[¶] . . . [¶]

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

[¶] . . . [¶]

3. Business and Professions Code section 10177 provides 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 himself or herself in a manner that would have warranted the denial of his or her application for a real estate license

[¶] . . . [¶]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

[¶] . . . [¶]

4. The burden of proof in this matter is on complainant to show by clear and convincing evidence to a reasonable certainty that respondent's licenses should be suspended or revoked. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-6.) Complainant has met this burden. As set forth in Factual Findings 8, 9, and 10, respondent admitted to doing everything, including falsifying and providing misleading information so that his mother could qualify for mortgage loans. Whatever the upgrades respondent may have made to the properties, they do not excuse or mitigate his dishonest and deceptive conduct. Additionally, the testimonies of character witnesses were outweighed by other clear and convincing evidence of respondent's dishonest and fraudulent dealings.

Cause for Discipline

5. Cause exists pursuant to Business and Professions Code section 10148, subdivision (a) to revoke respondent's licenses and licensing rights in that respondent failed to retain the transaction files for the Knight and Fawnskin properties for three years from the date that each transaction closed, and failed to make them available for examination, inspection and copying by the department by reason of Factual Findings 15 and 16.

6. Cause exists pursuant to Business and Professions Code section 10176, subdivisions (a) and (i); and section 10177, subdivisions (f) and (j), to revoke respondent's licenses and licensing rights in that mortgage loans were extended on the basis of applications containing fraudulent misrepresentations of material facts that were prepared by

respondent who received compensation from the loan proceeds as set forth in Factual Findings 8, 9 and 10.

Fitness for Continued Licensure

7. The determination whether a person is fit for continued licensure should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, aggravation or mitigation. "The Licensee, of course, should be permitted to introduce evidence of rehabilitation." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747). Respondent knowingly and intentionally made misleading representations about Ms. Richardson's gross monthly income, occupational title and financial obligations. At hearing respondent was dismissive of his deception and attempted to deflect responsibility to lenders whose lead he claimed to follow. He acknowledged no wrong doing. He showed no remorse.

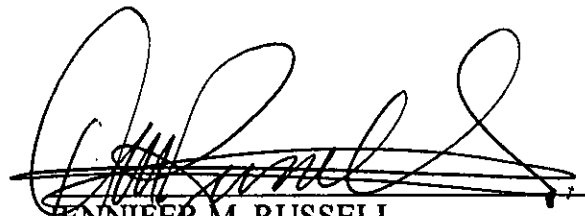
8. Honesty and trustworthiness are qualities of utmost importance in a real estate licensee, who must frequently act in a fiduciary capacity. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Harrington, supra*, at 402; *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Harrington, supra*, at 402; *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; and *Golde, supra*, at 178.)

9. Under all of the facts and circumstances, it is contrary to the public interest to permit respondent to retain his real estate broker license, even on a restricted basis.

ORDER

All licenses and licensing rights of respondent Bryan Raul Richardson are revoked.

DATED: June 17, 2010


JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

SACTA
file

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
JUN 24 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-36080 LA
12)
13)
14 BRYAN RAUL RICHARDSON)
15 dba Express Mortgage,)
Respondent.)

16
17 The Complainant, Robin L. Trujillo, a Deputy Real
18 Estate Commissioner of the State of California, for cause of
19 accusation against BRYAN RAUL RICHARDSON, alleges as follows:

20 1. The Complainant, Robin L. Trujillo, acting in her
21 official capacity as a Deputy Real Estate Commissioner of the
22 State of California, makes this Accusation against BRYAN RAUL
23 RICHARDSON.

24 2. BRYAN RAUL RICHARDSON (hereinafter referred to as
25 "Respondent") is presently licensed and/or has license rights
26 under the Real Estate Law (Part 1 of Division 4 of the Business
27 and Professions Code, hereinafter Code).

1 3. At all times herein mentioned, Respondent was
2 licensed as a real estate broker dba Express Mortgage.

3 4. At all times material herein, Respondent engaged in
4 the business of, acted in the capacity of, advertised or assumed
5 to act as a real estate broker in the State of California, within
6 the meaning of Section 10131(d) of the Code, including soliciting
7 borrowers and lenders and negotiating loans on real property.

8 5. Respondent originated two loans for borrower,
9 Carolyn Byrle Richardson.

10 6. Borrower purchased a property at 895 Knight Ave.,
11 Big Bear Lake, California. The loan closed on October 31, 2006
12 with BNC Mortgage, Inc. financing a first mortgage and Lehman
13 Brothers Bank financing a second mortgage.

14 7. Borrower purchased another property located at
15 39380 N. Shore Drive, Fawnskin, California. The loan closed on
16 January 2, 2007 with ACE Mortgage Funding financing a first
17 mortgage and a second mortgage.

18 8. Respondent acted as the selling broker and mortgage
19 broker and received compensation from the sellers, lenders, and
20 borrower at closing for the loans.

21 9. The Loan Application for the Fawnskin property did
22 not disclose the purchase of the Knight Ave property despite the
23 fact that Respondent brokered both loans. Therefore, Respondent
24 failed to disclose a known liability.

25 ///

26 ///

27 ///

1 10. Respondent was at the center of a fraud for profit
2 scheme. The loan applications for both loans contain numerous
3 fraudulent aspects including Borrower's income and place of
4 employment.

5 11. The Borrower immediately defaulted on the loans
6 indicating there was no intention to make the payments.

7 12. The Lenders relied upon the documentation they
8 received from Respondent and agreed to make the loans. If the
9 Lenders had known the true facts in this matter, the Lenders
10 would not have agreed to make the loans.

11 13. The Lenders have been damaged financially in this
12 matter as the Borrower has not made all required payments of
13 principal and interest due the Lenders. A foreclosure on the
14 property may have resulted from the default.

15 14. The conduct, acts, and/or omissions of Respondent,
16 as alleged above, subjects his real estate licenses and license
17 rights to suspension or revocation pursuant to Code Sections
18 10176(a), 10176(i), 10177(f) and (j).

19
20 SECOND CAUSE OF ACCUSATION

21 15. Complainant incorporates by references Paragraphs 1
22 through 4 of her First Cause of Accusation.

23 16. Respondent violated Code Section 10148 by failing
24 to retain copies of all documents and records pertaining to the
25 above loans.

26 ///

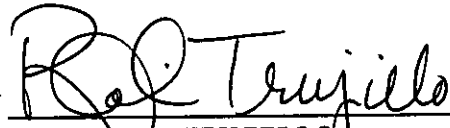
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1 17. The conduct, acts, and/or omissions of Respondent,
2 as alleged above, subjects his real estate licenses and license
3 rights to suspension or revocation pursuant to Code Section
4 10177(d) and (g).

5 WHEREFORE, Complainant prays that a hearing be
6 conducted on the allegations of this Accusation and that upon
7 proof thereof, a decision be rendered imposing disciplinary
8 action against all licenses and license rights of Respondent
9 BRYAN RAUL RICHARDSON under the Real Estate Law (Part 1 of
10 Division 4 of the Business and Professions Code) and for such
11 other and further relief as may be proper under other applicable
12 provisions of law.

13 Dated at Los Angeles, California

14 this 16 day of June, 2009.

15
16
17 

18 ROBIN L. TRUJILLO
19 Deputy Real Estate Commissioner

20
21
22
23
24 cc: Bryan Raul Richardson
25 Robin L. Trujillo
26 Sacto.
27 Phillip Ihde