

FILED
JAN 24 2011
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

[Handwritten Signature]

* * * * *

In the Matter of the Accusation of)	No. H-36149 LA
)	OAH #2010050658
E & R CAPITAL INVESTMENTS,)	
INC., and BRENDA ESPINOZA,)	
individually and as)	
designated officer of the)	
corporation,)	
)	
Respondents.)	

DECISION

The Proposed Decision dated November 23, 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.

This Decision shall become effective at 12 o'clock noon on FEB 14 2011.

IT IS SO ORDERED 1-11-2011.

JEFF DAVI
Real Estate Commissioner

[Handwritten Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

E & R CAPITAL INVESTMENTS, INC.,
and BRENDA ESPINOZA
individually and as designated officer of the
corporation,

Respondents.

Case No.: H-36149 LA

OAH No.: 2010050658

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 25, 2010.

James R. Peel, Senior Real Estate Counsel, represented the Complainant.

Respondents appeared by and through Brenda Espinoza.

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

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

FACTUAL FINDINGS

Parties

1. The Complainant, Robin L. Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, brought the Accusation against E & R Capital Investments, Inc. and Brenda Espinoza in her official capacity.

2. E & R Investments, Inc. and Brenda Espinoza individually and as designated officer of said corporation (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 (Code).

Broker Responsibility

3. Respondent E & R Capital Investments, Inc. was originally licensed as a real estate broker on December 30, 2004. Pursuant to Code section 10159.2, Respondent Brenda Espinoza is responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of the real estate law, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

4. 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 Code section 10131, subdivision (d), including soliciting borrowers and lenders and negotiating loans on real property.

Loan Transaction

5. In connection with Respondents' activities as a real estate broker, set forth in Findings 3 and 4, during July and August, 2006, Respondents permitted Erick G. Rizkallah and Richard Schellander who were not licensed by the Department in any capacity to solicit and negotiate a re-finance loan on real property located at 309 N. Fulton Street, Ojai, California, for borrowers Ashley W. Brown and Shawn William Brown.

6. During the course of the loan transaction Rizkallah and Schellander made a number of misrepresentations to the borrowers as to their license status and as to the particulars of the loan resulting in substantial economic damage to the borrowers.

Aggravation

7. As a result of the misconduct of the Respondents set forth in Findings 5 and 6, Respondents, Rizkallah and Schellander all were sued by the borrowers in the Superior Court, County of Ventura, Case No. CIV 247874 resulting in a Civil Judgment in favor of the borrowers and against Respondents, Rizkallah and Schellander. To date the Judgment remains unsatisfied.

LEGAL CONCLUSIONS

Violations

1. The conduct, acts and omissions of Respondents E & R Capital Investments, Inc. and Benda Espinoza, as set forth in Findings 5 and 6 subject their real estate licenses and license rights to suspension or revocation pursuant to Code sections 10137, 10177, subdivision (d) and 10177, subdivision (g).

2. The conduct, acts and omissions of Respondent Brenda Espinoza, as set forth in Findings 5 and 6, in failing to ensure full compliance with the Real Estate Law is in violation of Code section 10159.2 and subject her real estate licenses and license rights to suspension or revocation pursuant to Code sections 10177, subdivision (d), 10177, subdivision (g) and 10177, subdivision (h).

Disposition

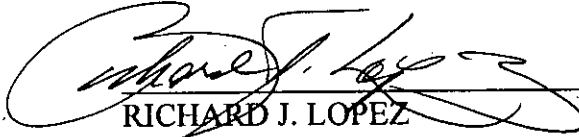
3. The objective of an administrative proceeding relating to licensing is to protect the public. *Fahmy v. MBC* (1995) 38 Cal.Ap. 4th 8107, 817; *Ex Parte Brounsall* (1778) 2 Cowp. 829, 98 Eng. Rep. 1385. The failure of Respondents to fulfill the statutory obligations and duties of licensure caused economic damage to borrowers Ashley W. Brown and Shawn William Brown, members of the public. Continued licensure of Respondents represents a risk to the public. Accordingly, the order which follows is consistent with the public interest.

ORDER

All licenses and licensing rights of E & R Capital Investments, Inc. and Brenda Espinoza under the Real Estate Law are hereby revoked.

Dated:

November 23, 2010


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

SACCD

FILED
JUL 30 2009
DEPARTMENT OF REAL ESTATE
[Handwritten signature]

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
6
7
8 Telephone: (213) 576-6982
9 -or- (213) 576-6913 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11	In the Matter of the Accusation of)	No. H-36149 LA
12)	<u>A C C U S A T I O N</u>
13	E & R CAPITAL INVESTMENTS, INC.,)	
14	and BRENDA ESPINOZA)	
15	individually and as)	
16	designated officer of)	
17	the corporation,)	
18)	
19	Respondents.)	

18 The Complainant, Robin L. Trujillo, a Deputy Real
19 Estate Commissioner of the State of California, for cause of
20 accusation against E & R CAPITAL INVESTMENTS, INC. and BRENDA
21 ESPINOZA individually and as designated officer of the
22 corporation, alleges as follows:

I

24 The Complainant, Robin L. Trujillo, acting in her
25 official capacity as a Deputy Real Estate Commissioner of the
26 State of California, makes this Accusation against E & R CAPITAL
27 INVESTMENTS, INC. and BRENDA ESPINOZA.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II

E & R CAPITAL INVESTMENTS, INC. and BRENDA ESPINOZA individually and as designated officer of said corporation (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

Respondent E & R CAPITAL INVESTMENTS, INC. was originally licensed as a real estate broker on December 30, 2004. Pursuant to Code Section 10159.2, Respondent BRENDA ESPINOZA is responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of the real estate law, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

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(d) of the Code, including soliciting borrowers and lenders and negotiating loans on real property.

V

In connection with Respondents' activities as a real estate broker, as described above, Respondents violated Section 10137 of the Code in that during July and August, 2006,

1 Respondents employed Erick G. Rizkallah and Richard Rizkallah,
2 who were not licensed as a real estate broker or salesperson, to
3 solicit and negotiate a re-finance loan on real property located
4 at 309 N. Fulton St., Ojai, California, for borrowers Ashley W.
5 and Shawn William Brown.

6 VI

7 The conduct, acts and/or omissions of Respondents E & R
8 CAPITAL INVESTMENTS, INC. and BRENDA ESPINOZA, as alleged above,
9 subject their real estate licenses and license rights to
10 suspension or revocation pursuant to Sections 10137, 10177(d)
11 and/or 10177(g) of the Code.

12 VII

13 The conduct, acts and/or omissions of Respondent BRENDA
14 ESPINOZA in failing to ensure full compliance with the Real
15 Estate Law is in violation of Section 10159.2 of the Code and
16 subject her real estate licenses and license rights to
17 suspension or revocation pursuant to Sections 10177(d), 10177(g)
18 and/or 10177(h) of the Code.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

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 E &
5 R CAPITAL INVESTMENTS, INC. and BRENDA ESPINOZA under the Real
6 Estate Law (Part 1 of Division 4 of the Business and Professions
7 Code) and for such other and further relief as may be proper
8 under other applicable provisions of law.

9 Dated at Los Angeles, California
10 this 30 day of July, 2009.

11
12
13 
14 ROBIN L. TRUJILLO
15 Deputy Real Estate Commissioner
16
17
18
19
20
21
22
23

24 cc: E & R Capital Investments, Inc.
25 Brenda Espinoza
26 Robin L. Trujillo
27 Sacto.