

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
)
COMMUNITY GROUP REALTY CORP.)
and SANTOS LOZOYA,)
)
)
Respondents.)

No. H-36608 LA
L-2010050670

FILED

DEC -2 2010

DEPARTMENT OF REAL ESTATE
BY: 

DECISION

The Proposed Decision dated November 1, 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.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

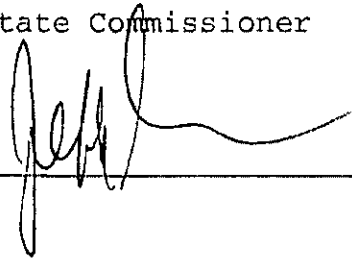
The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on December 23, 2010.

IT IS SO ORDERED

12/1/2010

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

COMMUNITY GROUP REALTY CORP.
doing business as Century 21 Community,
Unity Funding Group and, Community
Group Realty Property Division; and
SANTOS LOZOYA, individually and as
designated officer of Community Group
Realty Corp.,

Respondents.

Case No. H-36608 LA

OAH No. 2010050670

PROPOSED DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on September 29, 2010, in Los Angeles, California.

Elliott Mac Lennan, Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California.

Respondent Santos Lozoya (Lozoya) was present throughout the hearing and represented himself and Respondent Community Group Realty Corporation (CGRC).

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on September 29, 2010.

FACTUAL FINDINGS

1. On April 26, 2010, Complainant filed the Accusation against Respondents while acting in her official capacity as a Deputy Real Estate Commissioner of the Department.

2. At hearing, the Accusation was amended without objection to reflect the following change: "Lazoya" was replaced with "Lozoya" at all places written on the Accusation.

License History

3. On April 18, 2006, the Department issued real estate broker's license number, C/01522381, to CGRC. At all relevant times, CGRC held a corporate real estate broker's license issued by the Department. CGRC's broker's license expired on April 17, 2010.

4. CGRC maintained three licensed fictitious names: "Century 21 Community," "Community Group Realty Property Division," and "Unity Funding Group."

5. On September 23, 1987, the Department issued a real estate salesperson's license to Lozoya. On August 26, 2007, Lozoya's salesperson's license was terminated. On August 27, 2007, the Department issued real estate broker's license number, B/00972271, to Lozoya. Lozoya's broker's license is due to expire on August 26, 2011, unless renewed by the Department. On September 6, 2007, Lozoya was licensed as the designated officer of CGRC. On July 30, 2009, Lozoya's designated officer's license was cancelled for CGRC.

Brokerage Activities

6. Lozoya and CGRC acted as real estate brokers and conducted licensed activities within the meaning of Business and Professions Code section 10131, subdivisions (a) and (d), in the City of Commerce, County of Los Angeles.

7. Lozoya and CGRC conducted broker-controlled escrows through its escrow division under the exemption set forth in California Financial Code section 17006, subdivision (a)(4), for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

8. While acting in the capacity of a corporate real estate broker, CGRC accepted or received funds in trust (trust funds) from or on behalf of lenders, borrowers, and others, for sales and loan transactions brokered by CGRC, and thereafter made deposits and or disbursements of such funds.

9. The trust funds received by CGRC were deposited and/or maintained by CGRC in Commerica Bank, under account number 1893053817.

The Department Audit

10. On or between August 19, 2009 and September 22, 2009, the Department attempted to conduct an audit of CGRC to determine whether CGRC handled and accounted for trust funds and conducted its real estate activities in accordance with the Real Estate Laws and the Commissioner's Regulations. The scope of the audit was limited to escrow activity and it covered the period from September 1, 2006 to July 31, 2009 (audit period). Isabel Beltran (Beltran), employed with the Department as an auditor, conducted the audit. Beltran attempted to collect certain documents, books and records from Lozoya, since he was

the designated officer of CGRC during the audit period.¹ Specifically, Beltran was interested in examining trust fund documents, since those documents are essential to conducting an escrow audit.

11. On August 19, 2009, Beltran went to CGRC's main office in the City of Commerce and interviewed Lozoya. It was the first time that Beltran met with Lozoya. Along with being the designated officer of CGRC, Lozoya was also the President, Secretary, Treasurer and 100 percent shareholder of CGRC at that time. Beltran requested Lozoya to provide the documents Beltran needed to perform the escrow audit. On August 20, 2009, Beltran again went to CGRC's main office and requested the documents from Lozoya. On August 25, 2009, a subpoena duces tecum was served to Lozoya to provide records for the audit on September 10, 2009. On September 10, 2009, Beltran met with Lozoya and his attorney at the time, Anthony Egbase. Despite these multiple efforts, Lozoya did not provide the requested documents to Beltran. At hearing, Beltran explained that the documents he was requesting are essential to conducting an escrow audit.

12. Lozoya only provided the following documents to Beltran: (1) corporate documents and broker licenses, (2) trust account signatory card, and (3) trust account bank statements. Lozoya did not provide the necessary trust fund documents, specifically the trust account control records, separate records, deposit tickets, bank reconciliations, canceled checks, invoices, escrow receipts, escrow log, and escrow files despite Beltran's repeated requests for these documents. Without these documents, Beltran was unable to complete the audit.

13. At hearing, Lozoya admitted that he knew the Department was seeking certain documents. He also admitted that he did not provide the Department all the documents it was seeking. He claimed that he had two former partners and they managed the paperwork so it was hard for him to obtain the requested documents. Lozoya claimed that he had no contact with either partner, even though he testified that one of them left on good terms. He also claimed that SMS, a company that keeps software records for brokerages, had some records. Lozoya did not provide the records from SMS. Under cross examination, Lozoya admitted that he kept the escrow log on his computer, but claimed that he did not know the whereabouts of his own computer. Lozoya's claims are not convincing given that, by his own admission, Lozoya was the sole owner of CGRC from the end of 2008 until July 30, 2009. Thus, it was incumbent upon him to retain the trust account records and produce them upon request. At hearing, Lozoya also claimed that he was in possession of some of the records but he did not notify the Department since he thought the Department would want all of the documents or none of them. This rationale is not reasonable, in light of the multiple efforts made the Department to obtain the documents.

14. Since Beltran did not receive the escrow log, he was unable to determine the number of escrows closed and trust funds handled during the audit period. On August 19,

¹ The designated officer is responsible for monitoring the licensed activities of a corporation.

2009, Lozoya told Beltran, however, that CGRC closed approximately 24 escrow transactions and collected \$6.2 million in escrow trust funds in the 12 preceding months. Lozoya also told Beltran that CGRC maintained one trust account in connection with the escrow activity for the audit period ending July 31, 2009: Trust Account No. 1893053817 with Commerica Bank.

15. CGRC and Lozoya are required to retain all records of CGRC's activities and CGRC and Lozoya did not retain the records. Lozoya first learned of the audit on August 19, 2009, when Beltran came to see him. Lozoya did not receive notice of the audit prior to August 19, 2009 since Beltran was conducting the audit on the basis of an anonymous tip; however Lozoya was given ample opportunity to provide the documents to Beltran once he was made aware of the audit on August 19, 2009. It should be noted that as of the date of the hearing, the Department still had not received the requested trust fund documents.

16. The trust account signatory card provided by Lozoya, as indicated in Factual Finding 12, showed three signatories on the account: Lozoya, Isabel Maria Montoya (Montoya), and Maria Hilda Gonzalez (Gonzales). Lozoya testified that Montoya and Gonzales were his former partners from the day CGRC opened and both became active on April 19, 2006. He further testified that he and Montoya wanted Gonzales out of the partnership, so they bought her out in June 2008. He also testified that Montoya could not handle the stress so she left at the end of 2008. Lozoya was the sole owner from the end of 2008 to when CGRC closed, on July 30, 2009.

17. The evidence was not established as to the whether Montoya and/or Gonzales were licensed by the Department. What is clear, however, is that neither was licensed to CGRC at the relevant times in the Accusation. Gonzales was not licensed to CGRC during the entire audit period. Although Montoya may have been licensed to CGRC for part of the audit period, she was not licensed to CGRC for the entire period. At the time the audit was conducted, neither Montoya nor Gonzales was licensed to CGRC. Consequently, Lozoya and CGRC should not have permitted Montoya and Gonzalez to be authorized signatures on the escrow trust account during the entire audit period.

LEGAL CONCLUSIONS

Statutory Grounds for Discipline

1. Business and Professions Code section 10148 states in 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 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 10145 states in part:

(a)(1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, in to a trust fund account maintained by the broker in a bank...

[¶]...[¶]

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

3. Business and Professions Code section 10177, states in part:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[¶]...[¶]

(d) Willfully disregarded or violated the Real Estate Law ... or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law ...

Regulatory Grounds for Discipline

4. Title 10, California Code of Regulations, section 2834, states in part:

(a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

(1) a sales person licensed to the broker.

(2) a person licensed as a broker who has entered into a written agreement pursuant to section 2726 with the broker.

(3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

(b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:

(1) an officer through whom the corporation is licensed pursuant to section 10158 or 10211 of the Code; or

(2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account.

(c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, or the broker-officer of a corporate broker licensee, from responsibility as provided by law in handling trust funds in the broker's custody.

5. Title 10, California Code of Regulations, section 2950, states in part:

The following acts in the handling of an escrow by a real estate broker...are prohibited and may be considered grounds for disciplinary action:

[¶]...[¶]

(d) Failing to maintain books, records and accounts in accordance with accepted principles of accounting and good business practice.

6. Title 10, California Code of regulations, section 2951, states in part:

The provisions of Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2834 and 2835 of these regulations shall apply to the handling of funds and the keeping of records by a real estate broker who is not licensed under the Escrow Law (Section 17000, et. seq., of the Financial code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required.

Causes for Discipline

7. Cause exists to suspend or revoke CGRC's corporate broker license and Lozoya's broker license pursuant to Business and Professions Code sections 10148, subdivision (a), and 10145, Title 10, California Code of Regulations, sections 2950, subdivision (d) and 2951, as those sections interact with Business and Professions Code section 10177, subdivision (d), in that Respondents failed to retain the trust fund account records of CGRC during the audit period, by reason of Factual Findings 11 through 15.

8. Cause exists to suspend or revoke CGRC's corporate broker's license and Lozoya's broker's license pursuant to Business and Professions Code 10145 and Title 10, California Code of Regulations, section 2834, as those sections interact with Business and Professions Code section 10177, subdivision (d), in that Respondents permitted individuals who were not licensed to CGRC to be authorized signatories on an escrow trust account, by reason of Factual Findings 16 and 17.


9. Complainant established cause to revoke the licenses issued to CGRC and Lozoya by clear and convincing evidence. CGRC and Lozoya are required to retain the trust fund documents for three years and failed to do so. Lozoya failed to produce for examination, inspection and copying the trust fund documents he is obligated to retain for three years. Lozoya allowed Montoya and Gonzales, both who were not licensed to CGRC, to be signatories on the trust fund account. Lozoya did not fully cooperate with Beltran, despite Beltran's repeated efforts. Under all of these facts and circumstances, it is contrary to the public interest to permit Respondents to retain their licenses, even on a restricted basis.

ORDER

All licenses and licensing rights of Respondent Community Group Realty Corp. under the Real Estate Law are revoked.

All licenses and licensing rights of Respondent Santos Lozoya under the Real Estate Law are revoked.

DATED: November 1, 2010



JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings

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FILED

APR 26 2010

DEPARTMENT OF REAL ESTATE
BY: A. J.

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-36608 LA
COMMUNITY GROUP REALTY CORP.)	<u>A C C U S A T I O N</u>
doing business as Century 21)	
Community, Unity Funding Group)	
and, Community Group Realty)	
Property Division; and SANTOS)	
LAZOYA, individually and as)	
designated officer of Community)	
Group Realty Corp.,)	
Respondents.)	

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against COMMUNITY GROUP REALTY CORP. and SANTOS LAZOYA,
individually and as designated officer of Community Group Realty
Corp., alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official
capacity as a Deputy Real Estate Commissioner of the State of
California, makes this Accusation against COMMUNITY GROUP REALTY

1 CORP. and SANTOS LAZOYA.

2 2.

3 All references to the "Code" are to the California
4 Business and Professions Code and all references to "Regulations"
5 are to Title 10, Chapter 6, California Code of Regulations.

6 License History

7 3.

8 A. At all times mentioned, COMMUNITY GROUP REALTY
9 CORP. ("CGRC") was licensed or had license rights issued by the
10 Department of Real Estate ("Department") as a corporate real
11 estate broker. On April 18, 2006, CGRC was originally licensed
12 as a real estate broker.

13 B. At all times mentioned, SANTOS LAZOYA ("LAZOYA")
14 was licensed or had license rights issued by the Department as a
15 restricted real estate broker. On August 27, 2007, LAZOYA was
16 originally licensed as a real estate broker. At all times
17 mentioned, LAZOYA was licensed as the designated officer for
18 CGRC. On July 30, 2009, Respondent LAZOYA's designated broker
19 license was cancelled for CGRC.
20

21 C. At all times material herein, CGRC was licensed by
22 the Department as a corporate real estate broker by and through
23 LAZOYA, as the designated officer and broker responsible,
24 pursuant to Code Sections 10159.2 and 10211 of the Business and
25 Professions Code for supervising the activities requiring a real
26 estate license conducted on behalf CGRC of by CGRC's officers,
27

agents and employees, including LAZOYA.

Brokerage

4.

At all times mentioned, in the City of Commerce, County of Los Angeles, CGRC and LAZOYA acted as real estate brokers and conducted licensed activities including but not necessarily limited to:

A. Code Section 10131(a). CGRC and LAZOYA operated a residential resale brokerage and engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers, including the solicitation for listings of and the negotiation of the sale of real property as the agent of others; and,

B. Code Section 10131(d). CGRC and LAZOYA operated a mortgage and loan brokerage dba Superior Mortgage, and engaged in activities with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance, and

C. In addition, Respondents CGRC and LOZOYA conducted broker-controlled escrows through its escrow division under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental

1 to a real estate transaction where the broker is a party and
2 where the broker is performing acts for which a real estate
3 license is required.

4 Audit

5 5.

6 In or around August 2009, the Department attempted to
7 conduct an audit examination of the books and records of CGRC
8 pertaining to the activities described in Paragraph 4 that
9 require a real estate license. The audit examination was to
10 cover a period of time beginning on September 1, 2006 to July 31,
11 2009. The audit examination revealed violations of the Code and
12 the Regulations as set forth in the following paragraphs, and
13 more fully discussed in Audit Report LA 090039 and the exhibits
14 and work papers attached to said audit report.

15 Trust Account

16 6.

17 At all times mentioned, in connection with the
18 activities described in Paragraph 4, above, CGRC accepted or
19 received funds including funds in trust (hereinafter "trust
20 funds") from or on behalf of actual or prospective parties
21 including lenders and borrowers, for sales and loan transactions
22 brokered by CGRC and thereafter made deposits and or
23 disbursements of such funds. From time to time herein mentioned
24 during the audit period, said trust funds were deposited and/or
25 maintained by CGRC in the Comerica Bank as follows:
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27

1 "Community Group Realty Corp. dba Century 21 Community Inc.
Escrow Trust Account
2 Account No. 1893053817"
Commerica Bank
3 El Segundo, California 90245 (escrow trust account)

4 Violations Of The Real Estate Law

5 7.

6 In the course of activities described in Paragraphs 4
7 and 5, above, Respondents CGRC and LAZOYA, acted in violation of
8 the Code and the Regulations in that Respondents:

9 (a) After notice and subpoena on August 25, 2009 and on
10 September 10, 2009, failed to retain all records of CGRC's
11 activity during the audit period requiring a real estate broker
12 license, in violation of Code Section 10148.

13 (b) Permitted Maria Hilda Gonzalez an Isabel Maria
14 Montoya, real estate salespersons not licensed to CRGC, to be
15 authorized signatories on the escrow trust account, in violation
16 of Code Section 10145 and Regulations 2834, 2950(d) and 2951.

17 Discipline

18 8.

19 The conduct of Respondents CGRC and LAZOYA, described
20 in Paragraph 7, violated the Code and the Regulations as below:

21 PARAGRAPH

22 PROVISIONS VIOLATED

23 7(a)

Code Section 10148

24 7(b)


25 Code Section 10145 and Regulations
26 2834, 2950(d) and 2951
27

1 The foregoing violations constitute cause for discipline of the
2 real estate license and license rights of CGRC and LAZOYA under
3 the provisions of Code Section 10148 and 10177(d) and/or
4 10177(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 the license and license rights of Respondents
9 COMMUNITY GROUP REALTY CORP. and SANTOS LAZOYA, individually and
10 as designated officer of Community Group Realty Corp. under the
11 Real Estate Law (Part 1 of Division 4 of the Business and
12 Professions Code) and for such other and further relief as may be
13 proper under other applicable provisions of law.

14 Dated at Los Angeles, California

15 this 29th day of March 2010.

16 
17 Deputy Real Estate Commissioner

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24 cc: Community Group Realty Corp.
25 c/o Santos Lazoya D.O.
26 Maria Suarez
Audits - Isabel Beltran
Sacto

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