

FILED

AUG 15 2011

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: R. McDaniel

* * * * *

In the Matter of the Accusation of) No. H-36839 LA
)
) L-2010120184
JAMES YAKUP IPEK,)
)
Respondent(s).)
_____)

DECISION

The Proposed Decision dated June 17, 2011,
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)(C) of the
Government Code, the following correction is made:

Page 1, "LA" is added to the Case No.

This Decision shall become effective at

12 o'clock noon on SEP - 6 2011

IT IS SO ORDERED August 11, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner

William E. Moran

By WILLIAM E. MORAN
Assistant Commissioner, Enforcement

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JAMES YAKUP IPEK,

Respondent.

Case No. H-36839 *LA*

OAH No. 2010120184

PROPOSED DECISION

On May 17, 2011, Timothy L. Newlove, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, presided at the hearing of this matter in Los Angeles, California.

Amelia Vetrone, Staff Counsel at the Department of Real Estate (Department), represented Robin Trujillo, Chief Deputy Real Estate Commissioner of the Department (Complainant).

James Yakup Ipek (respondent) appeared in person and represented himself.

The ALJ received oral and documentary evidence. The parties argued the case and submitted the matter for decision on the hearing date. The ALJ now finds, concludes and orders as follows.

FACTUAL FINDINGS

1. Complainant brought the Accusation in this matter in her official capacity.
2. Respondent is licensed by the Department as a real estate broker. Respondent holds license number 1396532 and has been continuously licensed by the Department since in 2003. His license will expire in September 2011, unless renewed.

3. On March 25, 2010, the Division of Real Estate of the State of Colorado issued a Stipulation and Final Agency Order against the Colorado mortgage loan originator license held by respondent. The Stipulation and Final Agency Order revoked respondent's mortgage loan originator license and imposed a fine of \$5,500 payable to the Colorado Division of Real Estate.

4. The Colorado Division of Real Estate based the Stipulation and Final Agency Order upon an investigation report which respondent had an opportunity to review. The investigation report resulted from several complaints which alleged that respondent, through his mortgage brokerage company called Set2Go Loans, permitted unlicensed mortgage brokers to submit loans to lenders falsely representing that respondent was the interviewing or originating broker. From the findings and conclusions of the investigation report, the Colorado Division of Real Estate intended to bring formal administrative charges against respondent's Colorado mortgage loan originator license. However, as part of the Stipulation and Final Agency Order, respondent waived his due process rights, including the right to present a defense at an administrative hearing.

5. In the Stipulation and Final Agency Order, respondent admitted that he violated certain provisions of the Colorado Mortgage Loan Originator Licensing and Mortgage Company Registration Act, which is set forth in Colorado Revised Statutes (C.S.R.), section 12-61-901 et seq. Respondent admitted that he violated C.S.R., section 12-61-911, subdivision (1)(h), which provides that, "A mortgage loan originator . . . shall not . . . negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage loan originator or in connection with any investigation conducted by this division." This admission concerned respondent's lack of cooperation with the investigation of his company's loan brokerage activities in Colorado.

6. Respondent admitted that he violated C.S.R., section 12-91-905.5, subdivision (1)(x), which permits the Colorado Division of Real Estate to discipline the license of a mortgage loan originator for "[h]aving had a mortgage loan originator's license suspended or revoked in any jurisdiction. . . ." This admission concerned the fact that, in August 2008 after an administrative decision, the Real Estate Commissioner of the State of Texas revoked respondent's mortgage broker license for unlicensed activity and noncompliance with the Commissioner's requests.

7. Respondent admitted that he violated C.S.R., section 12-61-911, subdivision (1)(a), which provides that, "A mortgage loan originator . . . shall not (a) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person." Respondent also admitted that he violated C.S.R., section 12-61-905, subdivision (1)(a), which permits the Colorado Division of Real Estate to discipline the license of a mortgage loan originator for "[k]nowingly making any misrepresentation or knowingly making use of any false or misleading advertising." These admissions constituted the most significant charges against respondent. The investigation revealed that, for several FHA loans involving Colorado residents, while the loan documentation represented that respondent through Set2Go Loans was either the interviewing or originating mortgage

broker, in actuality the borrowers dealt exclusively with Colorado brokers who were either not licensed or not authorized to submit FHA loans to lenders. In this regard, the investigation determined that respondent aided and abetted unlicensed mortgage loan origination activity. For example, in a loan for G.H., the loan documents represented that respondent was an originating loan broker, but the borrower worked solely with an unlicensed agent named Eric Johnson. In an FHA loan for S.R., the loan documents also represented that respondent was the originating mortgage broker, but the borrower dealt exclusively with Todd Halaburka and 321 Loans who were not authorized to submit FHA loans to lenders.

8. Respondent insisted that he originated all loans involving Set2Go Loans in Colorado. He explained that he had a co-brokering arrangement with Todd Halaburka, who used the name of Set2Go Loans in loan brokerage matters without respondent's permission. At one time, respondent operated Set2Go Loans in 35 states, including Colorado. However, the scope of this operation has contracted considerably due to the collapse of the mortgage brokerage industry. Respondent was aware of the charges contained in the investigation report prepared by the Colorado Division of Real Estate. He decided not to defend such charges due to the expense involved, and, instead, agreed to resolve the matter through the Stipulation and Final Agency Order.

LEGAL CONCLUSIONS

1. In an administrative disciplinary proceeding, such as the pending Accusation against respondent Ipek, the burden of proof lies with the agency to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. Business and Professions Code (Code) section 10175 authorizes the Real Estate Commissioner to discipline the license of an real estate licensee upon the grounds provided in Article 3 (commencing with Code section 10175) of the Real Estate Law.

3. Code section 10177, subdivision (f), provides, in pertinent part, that the Real Estate Commissioner may suspend or revoke the license of a real estate licensee who has had a license issued by another state revoked or suspended "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 . . . fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the (state) Administrative Procedures Act. . . and only upon an express finding of a violation of law by the agency or entity."

4. The license discipline imposed upon respondent by the Colorado Division of Real Estate meets the elements of Code section 10177, subdivision (f). First, the Stipulation and Final Agency Order revoked respondent's Colorado mortgage loan originator license. Second, the revocation was based upon acts that would be grounds for discipline in California. Respondent's admission that he knowingly made any misrepresentation, and that he directly or indirectly employed any scheme, device or artifice to defraud would subject his

real estate broker license to discipline under Code section 10176, subdivision (a) [making any substantial misrepresentation], and subdivision (i) [any other conduct which constitutes fraud or dishonest dealing]. The determination that respondent aided and abetted unlicensed mortgage loan origination activity constitutes a violation of Code section 10137, and would subject his license to discipline under Code section 10177, subdivision (d) [willful disregard or violation of the Real Estate Law]. Respondent's admission that the State of Texas disciplined his mortgage brokerage license would further subject him to discipline under Code section 10177, subdivision (f) [out-of-state license revocation]. (Factual Findings 3, 5, 6, 7.)

5. Third, in disciplining respondent's mortgage loan originator license, the Colorado Division of Real Estate afforded him administrative due process protections which he waived. Fourth, the Stipulation and Final Agency Order contained express admissions by respondent of provisions in the Colorado real estate law that he violated. (Factual Findings 4, 5, 6, 7.)

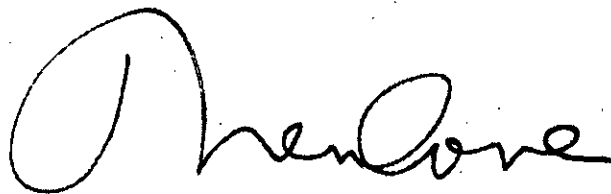
6. Respondent's primary excuse in this matter is that he permitted the Colorado Division of Real Estate to revoke his mortgage loan originator license because he did not want to incur the expense of defending an administrative proceeding in Colorado. This is probably true. However, respondent failed to explain the rather serious charges that formed the basis of the Colorado disciplinary action which showed that he operated his mortgage loan brokerage business with the assistance of unlicensed agents and that he submitted loan documentation with false information to FHA lenders. In addition, the license discipline incurred by respondent in the State of Texas shows a pattern of questionable activity.

7. Accordingly, cause exists to discipline respondent's real estate license pursuant to Code section 10177, subdivision (f), as set forth in Factual Findings 2 through 8, and Legal Conclusions 2 through 6.

ORDER

All licenses and licensing rights of respondent James Yakup Ipek under the Real Estate Law are revoked.

DATED: June 17, 2011



TIMOTHY L. NEWLOVE
Administrative Law Judge
Office of Administrative Hearings

page 2

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7

FILED

SEP 30 2010

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-36839 LA
12 JAMES YAKUP IPEK,) A C C U S A T I O N
13 Respondent.)
14

15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, acting in her official
17 capacity, for cause of Accusation against JAMES YAKUP IPEK,
18 ("Respondent") alleges as follows:

19 1.

20 Respondent is presently licensed and/or has license
21 rights under the Real Estate Law, Part 1 of Division 4 of the
22 California Business and Professions Code ("Code"), as a real
23 estate broker.

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27 ///

2.

(LICENSE DISCIPLINE)

On or about March 25, 2010, the Colorado Division of Real Estate for the State of Colorado issued its Stipulation and Final Agency Order permanently revoking the mortgage loan originator license of Respondent, and ordering Respondent to pay a fine of five thousand five hundred (\$5,500) dollars, based on Respondent's violation of Colorado Real Estate Laws.

3.

The acts resulting in the foregoing action taken with respect to Respondent's mortgage loan originator license, as described above, constitute cause under Section 10177(f) of the Business & Professions Code for the suspension or revocation of the license and license rights of Respondent under the Real Estate Law.

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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
5 Respondent, JAMES YAKUP IPEK, under the Real Estate Law (Part 1
6 of Division 4 of the Business and Professions Code) and for such
7 other and further relief as may be proper under other applicable
8 provisions of law.

9 Dated at Los Angeles, California: September 21, 2010.

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13 Robin Trujillo
14 Deputy Real Estate Commissioner
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25 cc: JAMES YAKUP IPEK
26 Robin Trujillo
27 Sacto.