

FILED

JUN 04 2014

BEFORE THE BUREAU OF REAL ESTATE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

By Chime

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In the Matter of the Accusation of)
) No. H-36859 LA
 WAN TIN,)
)
 Respondent.)
 _____)

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on April 24, 2014, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision suspends or revokes one or more real estate licenses on the ground of the violation of the Real Estate Law (commencing with Section 10000 of the Business and Professions Code ("Code")) or Chapter 1 (commencing with Section 11000 of the Code) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000 of the Code) of Part 2.

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.

FINDINGS OF FACT

I

On May 10, 2013, Howard Alston made the First Amended Accusation ("Accusation") in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were

mailed, by certified mail, to Respondent TIN's last known mailing address on file with the Bureau on May 10, 2013.

Respondent failed to file a Notice of Defense within the time required by Section 11506 of the Government Code. Respondent's default was entered herein on April 24, 2014.

II

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

III

At all times relevant herein Respondent TIN was the president of Respondent APARTMENT & COMMERCIAL LENDING GROUP INC. ("APARTMENT"), and was employed by APARTMENT continuously from July 9, 2006, to and including July 27, 2009. Respondent APARTMENT was engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate broker and/or real estate corporation in the State of California, within the meaning of Section 10131(d) of the Code. Said activity included soliciting borrowers and lenders and negotiating the terms of loans secured by real property between borrowers and third party lenders for or in expectation of compensation.

In or around July, 2007, Wu-sun C. and Cecilia C. (the "C's") were interested in refinancing their 16-unit apartment building. The C's were seeking a loan in the amount of \$1,000,000 with an interest rate of 6% or less. The C's contacted Respondent TIN after they saw her newspaper advertisement which advertised the availability of apartment loans.

Respondent TIN represented to the C's that she could obtain a loan for them at a fixed rate of 6% for ten years. At the C's request Respondent TIN entered into a fee agreement ("Fee Agreement") whereby the percentage amount of the fee payable to the broker, Respondent APARTMENT, was dependent upon the interest rate of the loan ultimately obtained for the C's. On or about August 1, 2007, Respondent TIN directed the C's to provide her with a check in the amount of \$10,000 made payable to Respondent APARTMENT. Respondent TIN falsely represented to the C's that the \$10,000 would be delivered to their lender to be used for the appraisal, loan processing and other

miscellaneous items. Respondent TIN further represented to the C's that the lender would credit them with any money left over through the loan escrow. The C's believed Respondent TIN's representations and relied upon them in delivering their check in the amount of \$10,000 to her.

Respondent TIN's representation to the C's that the \$10,000 check made payable to Respondent APARTMENT would be delivered in its entirety to their lender was false. The truth was that Respondent TIN intended to and did deliver only \$5,000 of the total \$10,000 sum to the C's lender, and retained the balance for herself. The \$5,000 delivered to the lender was sufficient to cover all the lender's charges for the C's loan.

On or about November 1, 2007, the C's obtained a loan in the amount of \$1,125,000 with an interest rate of 6.49%. Based on the interest rate of the loan, the fee payable to Respondent APARTMENT under the terms of the Fee Agreement was 0.5% of the loan amount, or \$5,625. Without the C's knowledge or consent Respondent TIN, on behalf of Respondent APARTMENT, demanded from the loan escrow a broker's fee which was contrary to the terms of the Fee Agreement and, further, far exceeded the amount due for the loan brokerage services rendered on behalf of the C's. Specifically, Respondent TIN demanded that Respondent APARTMENT receive a sum equal to 1.0% of the loan amount, or \$11,250, rather than the \$5,625 provided for by the terms of the Fee Agreement. Respondent TIN also demanded that Respondent APARTMENT receive an additional sum in the amount of \$1,610 from the loan escrow for miscellaneous items. The total amount of Respondent APARTMENT's escrow demand was \$12,860.

In making the escrow demand set forth above Respondent TIN knew that the amount of the broker demand was contrary to the agreement with the C's. Respondent TIN also knew that because Respondent TIN continued to retain in her possession the sum of \$5,000 from the C's initial payment, the escrow funds being withheld from the C's far exceeded the fee due under the terms of the Fee Agreement. Despite this knowledge Respondent TIN continued to press her wrongful demand, and refuses to permit the release of escrow funds owed to the C's.

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IV

On or about December 8, 2006, a misdemeanor complaint was filed against Respondent TIN in the Superior Court of California, County of Los Angeles, as Case No. 6CA25854. Thereafter, on or about January 24, 2008, the entire bench of the Los Angeles Superior Court was recused, and the case referred to the Chairperson of the Judicial Council for the appointment of a judge. On or about February 19, 2008, the case was transferred to Orange County Superior Court, and a judge of the Orange County Superior Court was assigned to the case for all purposes. On or about May 14, 2010, Respondent TIN was convicted of violating Penal Code Section 653m(a) [Harassing Contact with Another Person by Use of Obscenity or Threats] and Section 166(c)(1) [Willful and Knowing Violation of Protective Order], both misdemeanors. The foregoing conviction was affirmed on appeal on August 30, 2012. These crimes are substantially related to the qualifications, functions, or duties of a real estate licensee under Section 2910, Title 10, Chapter 6, California Code of Regulations ("Regulations").

V

On or about August 13, 2012, in the Superior Court of California, County of Los Angeles, in Case No. 1LG03464, Respondent TIN was convicted of violating Penal Code Section 273.6(a) [Intentional and Knowing Violation of Protective Order], a misdemeanor. This crime is substantially related to the qualifications, functions, or duties of a real estate licensee under Section 2910 of the Regulations.

DETERMINATION OF ISSUES

I

Cause for the suspension or revocation of Respondent TIN's license exists based on the conduct, acts and/or omissions of Respondent TIN as described in Paragraph III, above, in that the conduct constitutes making a substantial misrepresentation, the making of false promise(s) of a character likely to influence, persuade or induce, engaging in fraud or dishonest dealing, and or negligence or incompetence so as to justify the suspension or revocation of all real estate licenses and license rights of Respondent TIN under the provisions of Code

Sections 10176(a), 10176(b), 10176(g), 10176(i) and 10177(g).

II

The crimes of which Respondent was convicted, as described in Paragraphs IV and V, above, constitute cause under California Business and Professions Code Sections 490 and 10177(b) for the suspension or revocation of the license and license rights of Respondent under the Real Estate Law.

III

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

The licenses and license rights of Respondent WAN TIN under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon **JUN 25 2014**.

DATED: MAY 14 2014.

REAL ESTATE COMMISSIONER



JEFFREY MASON
Chief Deputy Commissioner