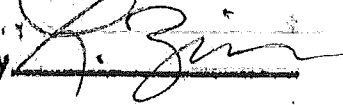


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FILED
MAY 20 2013

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
 GUARDIAN ENTERPRISES INC. doing)
 business as Guardian Real Estate,)
 Guardian Capital, and Guardian Realty;)
 and ALI KALANTARI DARIAN, individually)
 and as designated officer of)
 Guardian Enterprises Inc.)
)
 Respondents.)

No. H-37170 LA
L-2012050038

ORDER DENY RECONSIDERATION

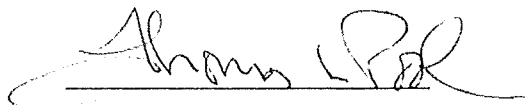
On March 21, 2013, a Decision was rendered in the above-entitled matter. The Decision was to become effective on April 19, 2013.

On April 26, 2013, Respondents petitioned for reconsideration of the Decision of March 21, 2013. The Decision and was stayed by separate Order to May 20, 2013

I have given due consideration to the petition of Respondents. I find no good cause to reconsider the Decision of March 21, 2013, and reconsideration is hereby denied.

IT IS SO ORDERED MAY 20 2013

Real Estate Commissioner



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FILED

APR 18 2013

DEPARTMENT OF REAL ESTATE
By Trust

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	DRE No. H-37170 LA
)	
GUARDIAN ENTERPRISES, INC. and)	OAH No. 2012050038
ALI KALANTARI DARIAN,)	
)	
Respondent(s).)	

ORDER STAYING EFFECTIVE DATE


On March 12, 2013, a Decision was rendered in the above-entitled matter to become effective on April 19, 2013 ("the Decision").

On April 16, 2013, Respondents requested a stay for the purpose of filing a petition for reconsideration of the Decision.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days, with a new effective date of 12 o'clock noon on May 20, 2013.

DATED: 4/18/2013

REAL ESTATE COMMISSIONER



Wayne S. Bell

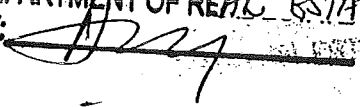
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BEFORE THE DEPARTMENT OF REAL ESTATE

FILED

STATE OF CALIFORNIA

MAR 21 2013

DEPARTMENT OF REAL ESTATE
BY: 

In the Matter of the Accusation of)
)
GUARDIAN ENTERPRISES INC., doing business)
as Guardian Real Estate, Guardian Capital, and)
Guardian Realty; and ALI KALANTARI DARIAN,)
individually and as designated officer of)
Guardian Enterprises Inc.,)
)
Respondent(s).)
_____)

DRE No. H-37170 LA
OAH No. 2012050038

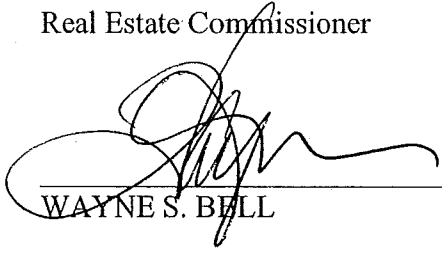
DECISION

The Proposed Decision dated February 25, 2013, 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
April 19, 2013

IT IS SO ORDERED 3/12/2013

Real Estate Commissioner



WAYNE S. BELL

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

GUARDIAN ENTERPRISES, INC. doing
business as GUARDIAN REAL ESTATE,
GUARDIAN CAPITAL, and GUARDIAN
REALTY; and ALI KALANTARI DARIAN,
individually, and as designated officer of
GUARDIAN ENTERPRISES, INC.,

Respondents.

Agency Case No. H-37170 LA

OAH Case No. 2012050038

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on January 29, 2013, in Los Angeles, California.

Elliott MacLennan, Staff Counsel, represented Deputy Real Estate Commissioner Joseph Aiu (Complainant).

Ali Kalantari Darian (Respondent Darian) represented himself individually and as designated officer of Guardian Enterprises, Inc., doing business as Guardian Capital, Guardian Real Estate, and Guardian Realty (Respondent Guardian). Respondent Darian also represented Respondent Guardian.¹

At hearing, Complainant amended the First Amended Accusation. Complainant deleted paragraphs 9, 10, 11, 12, 13, 14, and 17.

The parties submitted the matter for decision on January 29, 2013.

STATEMENT OF THE CASE

Complainant contends that Respondents' licenses merit discipline for violations of law relating to Respondents' mortgage loan activities uncovered by the Department of Real Estate's (Department) audit examination in 2010.

¹ The evidence was unclear whether Respondent Guardian's DBAs were current.

Respondents concede some violations but argue that the violations were unintentional and do not warrant the disciplining of their real estate licenses.

FACTUAL FINDINGS

1. On March 24, 2011, Complainant, acting in his, official capacity, filed the Accusation. Respondent filed a Notice of Defense on April 7, 2011. Complainant filed the First Amended Accusation on November 29, 2011. All of the allegations in the First Amended Accusation were deemed controverted pursuant to Government Code section 11507.

2. The Department issued a real estate broker license to Respondent Darian on approximately April 19, 1994; it expired on April 19, 1998. The Department retains jurisdiction over Respondent's expired real estate broker license pursuant to Business and Professions Code section 10103.

3. The Department issued a corporate real estate broker license to Respondent Guardian with Respondent Darian as its designated officer on approximately February 4, 1998; it expires on February 3, 2014, unless renewed.

4. Evidence of the issuance dates of Respondents' Department licensure was, by the Department's own wording, "[u]nofficial—taken from secondary records." The issuance dates in Factual Findings 2 and 3 are therefore approximate.

5. The Department conducted an audit of Respondents' mortgage loan activities for the period of December 1, 2006, through November 30, 2009. The Department initiated the examination to determine whether Respondents handled and accounted for trust funds and conducted its real estate activities in accordance with the applicable laws and regulations.

6. The audit emanated from a consumer complaint against Respondents. Complainant offered no evidence of that complaint, conceding at hearing that Respondents successfully settled that complaint with the consumer.

7(a). The auditor examined, among other things, loan files, bank statements, and Respondent Darian's statements from an interview on December 15, 2009. The auditor examined 12 mortgage loan files and seven loan modification files. Pursuant to the audit examination, dated March 9, 2010, the Department found the following issues:

7(b). Respondents received credit report and appraisal fees through the close of escrow and failed to maintain a record of trust funds received and disbursed. Respondents did not maintain a record of trust funds received from borrowers for loan modification activities. These were violations of Business and Professions Code section 10145, and California Code of Regulations, title 10, section 2831.

7(c). Respondents received credit report and appraisal fees through the close of escrow and failed to maintain separate records of trust funds received and disbursed. In addition, Respondents did not maintain separate records for each beneficiary of trust funds received from borrowers for loan modification activities. These were violations of Business and Professions Code section 10145, and California Code of Regulations, title 10, section 2831.1.

7(d). Respondents did not maintain written monthly reconciliations of the records of trust funds received and disbursed with the total balance of the separate beneficiary records for its bank account that was used to handle credit report and appraisal fees and advance fees. These were violations of Business and Professions Code section 10145, and California Code of Regulations, title 10, section 2831.2.

7(e). Based on loan transaction files examined, appraisal fees received at the close of escrow were not deposited in a trust account. Instead, these fees (trust funds) received were deposited and commingled with broker's funds in two separate bank accounts. These were violations of Business and Professions Code sections 10145 and 10176, subdivision (e), and California Code of Regulations, title 10, section 2832.

7(f). During the audit period, Respondents collected advance fees from borrowers for loan modification services without getting an advance fee agreement approved by the Real Estate Commissioner. These were violations of Business and Professions Code section 10085, and California Code of Regulations, title 10, section 2970.

7(g). Respondents collected advance fees from borrowers for the loan modification transactions without maintaining and providing an accounting to borrowers showing the description of the services to be rendered, identification of the trust account the funds were deposited into, and details of how the funds were disbursed. These were violations of Business and Professions Code section 10146, and California Code of Regulations, title 10, section 2972.

7(h). Based on loan files examined, approved mortgage loan disclosure statements (MLDS) were not found in 12 of the 12 loan files examined. Good faith estimates found in borrowers' loan files were unsigned. The good faith estimates did not satisfy the requirement of Business and Professions Code section 10240, subdivision (c). It did not state in a clear and conspicuous statement that the good faith estimates did not constitute a loan commitment and it did not include the broker's real estate license number. Respondents received rebates from the lenders. These were violations of Business and Professions Code section 10240, subdivisions (a) and (c), and California Code of Regulations, title 10, section 2840.

7(i). Respondents failed to retain the original license certificates of two salespersons at its main office. This was a violation of Business and Professions Code section 10160, and California Code of Regulations, title 10, section 2753.

7(j). Some of Respondents' books and records were not provided for audit examination, including bank statements for the loan modification activity, reliable copies of invoices, cancelled checks related to the credit report fees, and signed loan applications. This was a violation of Business and Professions Code section 10148.

7(k). Respondent Darian did not exercise reasonable control and supervision over the activities conducted on behalf of Respondent Guardian and by its employees as necessary to secure full compliance with the real estate laws. This was a violation of Business and Professions Code section 10159.2, and California Code of Regulations, title 10, section 2725.

8. The evidence, including the testimony of Isabel Beltran, the Department auditor, established all of the audit's findings set forth in Factual Findings 7(b) through 9(k).

9. Of the seven loan modification files reviewed by the Department auditor, the auditor noted that three resulted in successful loan modifications and four were unsuccessful. The auditor conceded that as to the four unsuccessful loan modifications, Respondents timely refunded the monies paid by those clients to those clients.

10. Regarding Factual Finding 7(e), Respondents argued that they believed they did not need a trust fund account because they asserted they were not collecting advance fees.

11. Regarding Factual Finding 7(f), Respondents eventually received the Department's approval for their advance fee agreement, but not until they had collected advance fees in the seven loan modifications.

12. Regarding Factual Finding 7(h), Respondents asserted that he knew of no law or regulation that required signed good faith estimates or for the loan files to contain the MLDS. However, Business and Professions Code section 10240, subdivisions (a) and (c), and California Code of Regulations, title 10, section 2840, require as Complainant alleged.

13. Regarding Factual Finding 7(i), Respondents admitted to not maintaining original license certificates for their salespersons, but they asserted that they kept wallet size license cards at the main office.

14. Respondents' evidence and arguments did not successfully refute the audit's findings.

15. Respondents argued that their transgressions did not result in harm to any homeowner. They have engaged in real estate activities as a mortgage loan company for approximately 15 years with no license discipline and no complaints until the instant matter.

16. Complainant's counsel conceded Respondents' misconduct did not constitute fraud or dishonest dealing, but argued that the uncovered inadequacies in Respondents' accounts were more than minor delinquencies.

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

The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following, or may suspend or revoke the license of 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 (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) 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 Part 2.

[¶] . . . [¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

6. Cause exists to discipline Respondents' real estate licenses, pursuant to Business and Professions Code section 10177, subdivision (d), for violating the real estate laws, as set forth in Factual Findings 1-8, and Legal Conclusions 1-5.

7. Complainant alleged that Respondents' actions constituted negligence and incompetence. However, there was no expert opinion or other evidence to establish what actions by a licensed broker would constitute negligence or incompetence. The evidence, therefore, was insufficient to establish those allegations.

8. Cause does not exist to discipline Respondents' real estate licenses, pursuant to Business and Professions Code section 10177, subdivision (g), for demonstrating negligence or incompetence, as set forth in Factual Findings 1-16, and Legal Conclusions 1, 2, 5, and 7.

9. Cause exists to discipline Respondent Darian's real estate broker license, pursuant to Business and Professions Code section 10177, subdivision (h), for failing to exercise reasonable supervision and control over the activities of Respondent Guardian, as set forth in Factual Findings 1-8, and Legal Conclusions 1-6.

10. Business and Professions Code section 10148, subdivision (b) provides that the Real Estate Commissioner shall charge a real estate broker for audit costs if that broker is found to have violated Business and Professions Code section 10145 or any regulation interpreting that provision. Pursuant to Factual Findings 1-7(e), Respondents' violations of Business and Professions Code section 10145 provide cause to impose audit costs against Respondents.

11. Complainant's enforcement costs are warranted (Bus. & Prof. Code, § 10106); however, in this case it is appropriate to reduce the costs. The Legislature allows the ALJ to reduce costs to reasonable costs. (Bus. & Prof. Code, § 10106, subd. (d).) In this case, at hearing, Complainant withdrew approximately one-half of the allegations against Respondents. The hearing process prompted Complainant to reduce its case against Respondents, an action that may not have occurred had Respondent not proceeded to hearing. The Supreme Court's analysis with regard to Business and Professions Code section 125.3, a very similar provision to section 10106, supports the analysis and conclusions here. (See *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 ["[T]he Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) "[T]he Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a [licensee] engaged in relatively innocuous conduct." (*Ibid.*, footnote omitted.)]) In the instant matter, it is appropriate to reduce the costs of enforcement by one-half. Complainant is therefore entitled to \$1,275, as the reasonable costs of enforcement.

12. Cause exists to impose Complainant's reasonable enforcement costs on Respondents, pursuant to Business and Professions Code section 10106, as set forth in Factual Findings 1-19, and Legal Conclusions 1-11.

13. Cause exists to impose Complainant's full audit costs on Respondents, pursuant to Business and Professions Code section 10148, as set forth in Factual Findings 1-19, and Legal Conclusions 1-11.

14. Considering all of the evidence, and being mindful of the need to protect the public, a period of suspension with education requirements would be sufficient to emphasize the applicable laws and regulations to Respondents. Further, and as suggested by Complainant's counsel, it would be appropriate to stay the suspension on condition of paying a monetary penalty. The public safety and welfare would still be safeguarded. The language of the Order relating to the suspension and monetary penalty in lieu of suspension is largely taken from reference to California Code of Regulations, title 10, section 2930, subdivision (11).

ORDER

1(a). All licenses and licensing rights of Respondents Ali Kalantari Darian and Guardian Enterprises, Inc., doing business as Guardian Real Estate, Guardian Capital, and Guardian Realty, under the Real Estate Law are suspended for a period of 90 days from the effective date of this Decision; provided, however, that if Respondents petition, 60 days of said suspension shall be stayed for two years, with 30 days actual suspension, and upon the following terms and conditions:

1(b). The 30 days actual suspension shall be stayed on condition that Respondent Guardian and Respondent Darian each pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$83.33 for each day of the suspension for a total monetary penalty of \$2,500 each, and \$5,000 total.

1(c). Said payments shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said checks must be received by the Department prior to the effective date of the Decision in this matter.

1(d). Respondents shall obey all laws, rules, and regulations governing the rights, duties, and responsibilities of a real estate licensee in the State of California.

1(e). No further cause for disciplinary action against the real estate licenses of Respondents occurs within two years from the effective date of the Decision in this matter.

1(f). If Respondents fail to pay the monetary penalties in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event Respondents shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

1(g). If Respondents pay the monetary penalties and if no further cause for disciplinary action against the real estate licenses of Respondents occurs within two years from the effective date of the Decision, the stays hereby granted shall become permanent.

1(h). Respondent Darian shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent Darian fails to satisfy this condition, the Commissioner may order suspension of Respondents' licenses until Respondent Darian passes the examination.

1(i). Respondent Darian shall submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that

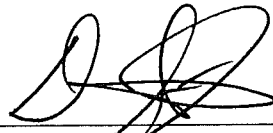
Respondent Darian has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

1(j). Respondent Darian shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent Darian has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent Darian fails to satisfy this condition, the Commissioner may order the suspension of Respondents' licenses until Respondent Darian presents such evidence. The Commissioner shall afford Respondents the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

2. Respondents shall to pay \$5,276.30 in audit costs to the Department of Real Estate or other entity, as directed by the Real Estate Commissioner. The audit costs shall be paid within 60 days of the mailing of the notice of billing.

3. Respondents shall pay \$1,275 in enforcement costs to the Department of Real Estate or other entity, as directed by the Real Estate Commissioner. The enforcement costs shall be paid within 60 days of the effective date of this Decision.

Dated: February 25, 2013



DANIEL SUAREZ
Administrative Law Judge
Office of Administrative Hearings