

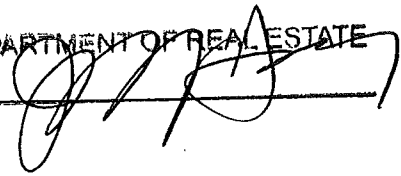
FILED

JUN 01 2012

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

In the Matter of the Accusation of)	No. H-37518 LA
)	
GREG A. TOMASYAN,)	OAH No. 2011100497
)	
Respondent.)	
_____)	

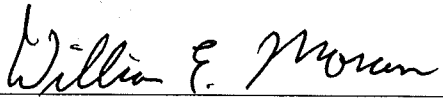
DECISION

The Proposed Decision dated April 11, 2012, 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
JUN 21 2012

IT IS SO ORDERED May 23, 2012

Real Estate Commissioner



By WILLIAM E. MORAN
Assistant Commissioner, Enforcement

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

GREG A. TOMASYAN,

Respondent.

Agency Case No. H-37518 LA

OAH Case No. 2011100497

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on March 14, 2012, in Los Angeles, California.

Cheryl D. Keily, Staff Counsel, represented Deputy Real Estate Commissioner Robin Trujillo (Complainant).

Greg A. Tomasyan (Respondent) represented himself.

The parties submitted the matter for decision on March 14, 2012.

STATEMENT OF THE CASE

Complainant seeks to discipline Respondent's real estate broker license for fraud, dishonest dealing, making substantial misrepresentations, and making false promises of a character likely to influence, persuade or induce action in his dealings regarding three distinct real property transactions in 2010 and 2011.

Respondent did not testify, but requested that the Department of Real Estate (the Department) allow him to retain his license, in probationary status if necessary, to give him a means to provide for his family.

FACTUAL FINDINGS

1. Complainant, acting in her official capacity, filed the original Accusation on September 12, 2011. Respondent filed a Notice of Defense on September 21, 2011. Complainant filed a First Amended Accusation on January 25, 2012. Pursuant to Government Code section 11507, the amended Accusation was deemed controverted by Respondent.

2. The Department issued a real estate salesperson license to Respondent on July 13, 1999. The Department issued a real estate broker license to Respondent on December 8, 2009; it expires on December 7, 2013, unless renewed.

3. In June 2010, Nga Azarian and her husband (the Azarians) met with Respondent to discuss selling their house and potentially buying another house. Respondent told the Azarians that it would not be possible to sell their house in the conventional manner because they owed more than the house was worth. Respondent suggested that they consider a short sale, but he explained to them that they needed to show the lender bank that they did not have assets. To do this, Respondent suggested that the Azarians pay their bank assets to Respondent and Respondent assured them he would deposit the money into a real estate account, holding it for them until the short sale was completed. He further assured them he would eventually return the assets to them. In June 2010, the Azarians paid Respondent \$79,500.

4. In July 2010, Respondent met with the Azarians and told them he had lost their money, using it to gamble. Respondent asked the Azarians for time to refund their money. Respondent agreed to reimburse them, but he did not.

5. Pursuant to a civil judgment against Respondent and others, Respondent currently owes the Azarians \$44,000 (another amount was paid to the Azarians by the involved realty company).

6. In February 2010, Stan Sitnitskiy met with Respondent to discuss the purchase of a house. Eventually, Respondent showed Sitnitskiy a house (a short sale), and Sitnitskiy wanted to purchase it. In June 2010, Sitnitskiy paid Respondent \$66,000. Respondent assured Sitnitskiy that he would place the \$66,000 in a trust account. Sitnitskiy signed a purchase agreement and relied on Respondent to pursue the process required of a short sale. After two months passed, Sitnitskiy noted that the lender bank had not yet approved the short sale, and asked Respondent to return his money. In approximately November 2010, Respondent admitted to Sitnitskiy that Respondent had lost the \$66,000 gambling. Respondent promised, in writing, to reimburse Sitnitskiy, but he did not. Sitnitskiy filed a civil suit against Respondent (Los Angeles Superior Court case number EC 054941). In February 2011, in that civil suit, Respondent and Sitnitskiy entered into a stipulated judgment wherein Respondent agreed he owes Sitnitskiy \$66,000. To date, Respondent has not paid Sitnitskiy any portion of the \$66,000.

7. In August 2011, Natalia Sarkisian met with Respondent to discuss the purchase of apartments or condominiums. Respondent began showing Sarkisian a number of properties and informed Sarkisian that she needed to pay deposits into escrow to secure the potential purchases. From approximately August through September 2011, Sarkisian paid Respondent \$156,519.98, in several payments. Respondent assured her the money would be deposited in accounts to secure her purchases. In approximately October 2011, Respondent admitted to Sarkisian that he used Sarkisian's payments to gamble and lost the entire amount.

Respondent promised to reimburse Sarkisian, but he has not. To date, Respondent owes Sarkisian \$156,519.98.

8. Respondent refused to testify because he is a defendant in a pending criminal case related to some portion of the facts herein.¹ Consequently, there was no evidence to contest the facts, as proffered by Complainant.

9. Respondent presented evidence of his professional background. Since 2010, he has been the owner of "G-Max Estates & Fine Properties." He has been recognized for his real estate work by RE/MAX Realty, including being a member of the RE/MAX International Hall of Fame, and providing 10 years of realty service through RE/MAX.

LEGAL CONCLUSIONS

1. The Department bore the burden of proof by clear and convincing evidence.
2. Business and Professions Code section 10176 states in part:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may . . . permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(g) The . . . taking by a licensee of any . . . undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement

[¶] . . . [¶]

¹ At the start of the hearing, Respondent moved for a continuance, arguing that the instant matter should not occur until the pending criminal matter goes forward. Complainant's counsel objected and the motion was denied.

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

3. Respondent took the sizeable deposits of the Azarians, Sitnitskiy, and Sarkisian and used them to gamble. He did not place the money in accounts for the purposes that he represented to each of them and for which the Azarians, Sitnitskiy, and Sarkisian each employed Respondent. Respondent's actions constitute substantial misrepresentations and dishonest dealings, and are therefore violations of Business and Professions Code section 10176, subdivisions (a) and (i).

4. California Code of Regulations, title 10, section 2910 states in part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the [Business and Professions] Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

[¶] . . . [¶]

(2) . . . the uttering of a false statement.

[¶] . . . [¶]

(4) The employment of . . . deceit, falsehood, or misrepresentation to achieve an end.

5. Respondent's taking of the deposits from the Azarians, Sitnitskiy, and Sarkisian, and telling each of them that he would deposit their respective deposits into separate accounts for their respective transactions, when in fact he used the money to gamble, constitute actions that are substantially related to a real estate broker's qualifications, functions, and duties. (Cal. Code Regs., tit. 10, § 2910, subs. (a)(2) and (a)(4).)

6. Cause exists to discipline Respondent's real estate broker license, pursuant to Business and Professions Code section 10176, subdivisions (a), and (i), for making substantial misrepresentations and engaging in dishonest dealing, as set forth in Factual Findings 1-7, and Legal Conclusions 1-5.

7. There was insufficient evidence to conclude that Respondent failed to disclose to his employer the amounts of the deposits of the Azarians, Sitnitskiy, or Sarkisian. There was insufficient evidence otherwise to find a violation of Business and Professions Code section 10176, subdivision (g).

8. Cause does not exist to discipline Respondent's real estate broker license, pursuant to Business and Professions Code section 10176, subdivision (g), as set forth in Factual Findings 1-7, and Legal Conclusions 1, 2, and 7.

9. 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 . . .

[¶] . . . [¶]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

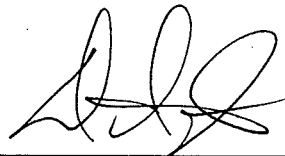
10. Cause exists to discipline Respondent's real estate broker license, pursuant to Business and Professions Code section 10177, subdivision (j), for dishonest dealing, as set forth in Factual Findings 1-7, and Legal Conclusions 1-6, and 9.

11. Respondent's actions were serious and harmful to the public, namely the Azarians, Sitnitskiy, and Sarkisian. Within the context of the established facts, and with no evidence to contest those facts and no evidence of mitigation or Respondent's rehabilitation, revocation is the only discipline that will safeguard the public.

ORDER

All licenses and licensing rights of Respondent Greg A. Tomasyan under the Real Estate Law are revoked.

Dated: April 11, 2012



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings