

FILED

DEC 13 2012

DEPARTMENT OF REAL ESTATE
BY: *[Handwritten Signature]*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	
CORNER STREET MORTGAGE;)	NO. H-37827 LA
JACK D. BULIS and JAMES MICHAEL)	
BULIS, individually and formerly as)	L-2012040007
designated officers of Corner Street Mortgage,)	
)	
Respondents)	
_____)	

DECISION

The Proposed Decision dated November 2, 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 JAN - 2 2013

IT IS SO ORDERED 12/7/2012

Real Estate Commissioner

[Handwritten Signature]

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CORNER STREET MORTGAGE; JACK D.
BULIS; and JAMES MICHAEL BULIS,
individually and formerly as designated
officers of Corner Street Mortgage,

Respondents.

Case No. H-37827 LA

OAH No. 2012040007

PROPOSED DECISION

This matter came on regularly for hearing on August 13, 2012, in Los Angeles, California, before Mark Harman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Maria Suarez (Complainant) was represented by James R. Peel, Counsel, California Department of Real Estate (Department). Jack D. Bulis (Respondent) represented himself. Respondents Corner Street Mortgage (Respondent CSM) and James Michael Bulis did not request a hearing on the Accusation and did not appear.

Complainant seeks to impose discipline on Respondent's real estate broker license based on allegations that, while Respondent was the designated officer of Respondent CSM, Respondent CSM solicited loan modification services agreements, charged and collected advance fees from customers before having an advance fee agreement approved by the Department, failed to maintain a trust account in accordance with regulatory requirements, commingled customers' trust funds with general business account funds, failed to perform all services that were promised in connection with the loan modification services agreements, and failed to refund the customers' monies. Complainant further alleges that Respondent failed to supervise Respondent CSM's employees who engaged in unlawful loan modification activities, which included his brother, James Michael Bulis. Respondent has alleged that his brother committed the alleged violations and that Respondent did not engage in, and was not aware of, his brother's illegal activities.

Oral and documentary evidence was received. The record was closed on August 13, 2012, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2a. Both Respondent and his brother, James Michael Bulis, became licensed real estate salespersons on May 31, 1996, in the employ of the same broker, American World Financial Group (AWFG). Both left AWFG in December 1997, moved to different brokers, and then returned to AWFG in 1998. Both left AWFG again in May 2000. Over the next eight years, the brothers often worked for the same broker at the same time, e.g., Majed Mahfoud and Pacific Coast Funding, Inc. On February 13, 2008, Respondent was issued a real estate broker license.

2b. Respondent CSM was issued a corporate real estate broker license on April 15, 2008, with Respondent as the designated officer. James Michael Bulis activated his salesperson license in the employ of Respondent CSM on April 24, 2008. Respondent CSM's business address was 1655 6th Street, Suite A-4, Corona, California. The brothers' mother, who did not hold any real estate licenses, helped the brothers in the beginning by purchasing some desks, and she was a signatory on the Respondent CSM trust fund account and general business accounts.

2c. The Department has not previously imposed discipline against Respondent's licenses.

3. Between October 2008 and at least September 2010, in at least 43 instances, Respondent CSM solicited customers for its loan modification services. These customers primarily were borrowers who were seeking more favorable terms or reduced interest rates for problematic residential loans. Respondent CSM required customers to pay "advance fees" under its loan modification services agreements. Respondent CSM's loan modification transactions required a real estate broker license under section 10130 of the Real Estate Law (Business and Professions Code¹ section 10000 et seq.), because they involved solicitations of borrowers for services that included negotiations with lenders for modifications of existing home loans.²

4. Respondent CSM received advance fees of approximately \$80,000 in connection with the 43 loan modification transactions. Respondent CSM failed to submit to the Department for its review and approval all advance fee agreements and other materials that it proposed to use in connection with charging customers advance fees, as required by section 10085 and California Code of Regulations, title 10

¹ All further statutory references are to the Business and Professions Code, unless otherwise specified.

² (See Bus. & Prof. Code, § 10131, subd. (b).)

(Regulations), section 2970. Respondent CSM failed to deposit in its trust account the advance fees that it received from customers for engaging in loan modification activities; rather, it deposited these funds in Respondent CSM's general business account, and thus, commingled customers' trust funds with general business funds. Respondent CSM's failure to properly deposit these trust funds violated section 10145, subdivision (a), and Regulations, sections 2832 and 2835.

5. Respondent CSM opened a trust fund account upon the company's inception, but there was never any activity in the account and it was closed on December 9, 2008. At all times relevant, Respondent CSM failed to maintain a trust account for receipt of customers' trust funds in accordance with the relevant provisions of the Real Estate Law, including section 10145, and the Regulations, sections 2831, 2831.1, and 2831.2, in that, Respondent CSM failed to maintain a columnar record and separate records of all trust funds received and disbursed in connection with advance fees received from borrowers, and failed to maintain a monthly reconciliation of the columnar record with separate records.³

6. On April 2, 2009, Respondent notified the Department to cancel his designated officer status with Respondent CSM. James Michael Bulis became the new designated officer of Respondent CSM on August 24, 2009. Respondent CSM did not have a designated officer between April 2, 2009, and August 24, 2009.

7. Respondent CSM failed to provide all promised services to at least half the 43 borrowers with whom it had advance fee agreements. Respondent CSM failed to refund any of these customers' funds.

8. Respondent was the President of Respondent CSM. He testified that, after he and his family started Respondent CSM, it primarily was making residential loans under a California finance lenders' license, and also made loans under its real estate broker license. In June 2008, Respondent CSM had approximately 10 employees or agents who solicited customers seeking home loans. Respondent said that, within four to five months, he knew the company would not succeed. A bank foreclosed on Respondent's residence in October 2008, and he stopped regularly going to Respondent CSM's office. This left his brother to run the company. In December 2008, Respondent announced to the officers and managers that he was leaving the company. Respondent provided no compelling reason for failing to notify the Department immediately upon his resignation, which left Respondent CSM without an active and involved designated broker. Respondent's testimony in this regard was credible.

³ These facts were developed as a result of the Department's examination of Respondent CSM's books and records, which the examiners completed on September 23, 2011. The examination covered a period from August 1, 2008, through June 30, 2011. During the examination, both Respondent and James Michael Bulis provided statements to the Department's examiners.

9. Respondent maintains that his brother deceived him, and that during the time that he was the designated officer of Respondent CSM, he was not aware of, and did not participate in, any of the loan modification activities performed by Respondent CSM. He did not solicit, meet with, or collect advance fees from any customers. Respondent described James Michael Bulis as a "rogue" who engaged in these transactions independently. The loan modification/advance fee agreements contain no references to Respondent. No customers' checks were made payable to Respondent. Respondent said he never wanted to engage in loan modification/advance fee agreements because these transactions do not generate substantial income and involve thorny regulatory issues.

10. Respondent is married and has three children, ages three, five, and eight. He works from home and primarily solicits customers for rental properties. He does not make real estate loans, but does some sales. He currently supervises five people. He said that this has been a big learning experience.

11. Except for those previously found to have merit, all other allegations in the Accusation and all other contentions of the parties at the hearing are found to lack merit or to be surplusage.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate broker license pursuant to section 10177, subdivision (h), for failure to exercise reasonable supervision of Respondent CSM's agents and employees in the conduct of activities for which a real estate license is required.

2. Cause exists to discipline the real estate broker licenses of Respondents pursuant to section 10177, subdivisions (d) and (g), for negligent acts and incompetence, evidenced by a failure to exercise reasonable supervision of Respondent CSM's agents and employees, for failure to maintain properly a trust fund account. Complainant's evidence, however, has failed to demonstrate that Respondent directed, caused, or participated in, either directly or indirectly, the unlawful loan modification transactions of Respondent CSM or James Michael Bulis, who were performing loan modification services or advance fee transactions independently, as described in factual finding numbers 10 and 11, in violation of the Real Estate Law.

3. A corporate real estate broker can only act by and through its designated officer, and the designated officer is responsible for ensuring the corporate broker, its employees, and agents, are complying with the requirements of the Real Estate Law. Respondent was the original designated broker of Respondent CSM until he notified the Department to cancel this designation on April 2, 2009. Until that

time, Respondent was responsible for the activities of Respondent CSM and James Michael Bulis when they engaged in real estate activities, e.g., the loan modification services, that required a license.

4. A broker must exercise good judgment in overseeing the activities of salespersons. A broker has a duty of reasonable supervision to protect customers and the public. A broker must develop policies, rules, and procedures, and a system for monitoring compliance with these requirements.⁴

5. Respondent clearly failed to supervise James Michael Bulis's activities. Respondent also failed to maintain trust account records of transactions that the corporate licensee performed. If he was unaware of the loan modification transactions, he still bears some responsibility, because he failed to implement policies and procedures that would enable him to supervise Respondent CSM's employees in the performance of real estate activities.

6. Section 10179 provides that: "No violation of any of the provisions of this part relating to real estate or of Chapter 1 of Part 2 by any real estate salesman or employee of any licensed real estate broker shall cause the revocation or suspension of the license of the employer of the salesman or employee unless it appears upon a hearing by the commissioner that the employer had guilty knowledge of such violation." In this matter, Complainant has not demonstrated that Respondent knew about the unlawful loan modification transactions, but this lack of knowledge is immaterial to the causes that were established, i.e., Respondent's failing to adequately supervise his agents.

⁴ Section 10159.2, subdivision (a), provides that: "The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required." Likewise, California Code of Regulations, title 10, section 2725, subdivision (a), provides, in part, as follows: "A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage: (a) Transactions requiring a real estate license. [¶ . . . ¶] The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices. [¶] A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems."

7. Complainant has not refuted Respondent's assertion he was deceived by his brother and that he did not know about, participate in, or profit from the loan modification transactions performed by his brother, but Respondent likewise has failed to demonstrate that he employed any reasonable means for determining whether his agents, including his brother, were engaged in lawful real estate activities. It may be more difficult to supervise a close relative due to family dynamics. A reasonable inference is that Respondent chose, whether as a business or a personal decision, not to find out what was going on. Respondent simply failed to satisfy his duty to supervise his employees.

8. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Respondent was negligent. He failed to exercise reasonable supervision over his brother. Respondent's failure to supervise his brother demonstrates that he lacks an ability to perform the activities of a licensed real estate broker in a manner consistent with the public safety. Further, Respondent has not offered any strong evidence of rehabilitation.

9. The public safety, welfare, and interest will not be adequately protected by the issuance of restricted brokers' licenses to Respondent. While Complainant failed to establish that Respondent intentionally caused these violations, Respondent's failure to supervise is sufficient to prohibit him supervising the real estate activities of others, at least for the time being. Complainant, however, has not demonstrated that Respondent is unfit to conduct real estate transactions, fairly and competently, as a salesperson. It would not be against the public interest to allow Respondent to work as a real estate salesperson under a restricted license, as long as he is properly supervised.

ORDER

All licenses and licensing rights of Respondent Jack D. Bulis under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted licenses issued to the Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of a conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to the Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for a license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

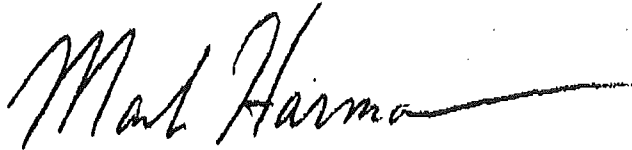
(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he 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 fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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6. Respondent 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 fails to satisfy this condition, the Commissioner may order suspension of
Respondent's license until he passes the examination.

DATED: November 2, 2012

A handwritten signature in black ink that reads "Mark Harman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

MARK HARMAN
Administrative Law Judge
Office of Administrative Hearings