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JUL 23 2012

DEPARTMENT OF REAL ESTATE
BY: *Quintanilla*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
NICOLE PATRICE FUNN,)
Respondent.)

No. H-37908 LA

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 10, 2012 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.

FINDINGS OF FACT

1.

On February 15, 2012, Robin Trujillo made the Accusation in her 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, return receipt requested, and by regular mail to NICOLE PATRICE FUNN's ("Respondent") last known mailing address on file with the Department on February 23, 2012.

On April 10, 2012, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2.

Respondent 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 ("Code") as a real estate broker.

3.

On February 25, 2009, Respondent filed a Fictitious Business Name Statement with the Los Angeles Registrar-Recorder County Clerk. This Fictitious Business Name Statement listed Respondent as the registrant for "Home Keepers of America" (hereinafter "HKA").

4.

On June 20, 2008, Respondent filed a fictitious business name statement with the Auditor/Controller - Recorder for the County of San Bernardino. The fictitious business name filed by Respondent was "U.S. Capital Group Inc. Foreclosure Div."

5.

On July 10, 2009, Ronald & Tauni Roster ("the Rosters") entered into an agreement with HKA, in which HKA agreed to negotiate a modification of the Rosters' loan, which was secured by real property located at 2171 Kearney Avenue SW, Naples FL, in exchange for payment of a \$3,500 advance fee payment to HKA. On July 10, 2009, the Rosters submitted an advance fee of \$3,500 to HKA.

6.

Among the terms and conditions of the agreement described in paragraph 5 above, was a promise that HKA would return 35% of the fees if the mortgage note was not purchased by HKA. The agreement further stated that HKA had 90 days from termination of the contract to refund any money owed to the client. HKA never obtained a modification of the Roster's mortgage loan, nor did HKA purchase the Roster's loan. On March 5, 2010, the Rosters received a letter from HKA, in which HKA agreed to refund the Rosters 35% of their fees. The Roster's did not receive this refund within 90 days of terminating their contract, or at any other time.

DETERMINATION OF ISSUES

1.

Respondent never applied with the Department to use the fictitious business name described in Finding 4 above. This constitutes a violation of Code Section 10159.5 and Regulation 2731. Respondent also used the fictitious business name

described in Finding 3 above before obtaining a license with the Department to use it, in violation of Regulation 2731. These violations provide cause for the suspension or revocation of the licenses and license rights of Respondent pursuant to Code Sections 10177(d) and 10177(g).

2.

The agreement made by HKA, as described in Finding 5 above, constitutes an advance fee agreement within the meaning of Code Section 10026. Respondent failed to submit the advance fee agreement, described in Finding 5 above, to the Commissioner ten days before using it, in violation of Code Sections 10085 and 10085.5, as well as Section 2970 of Title 10, California Code of Regulations ("Regulations"). This provides cause for the suspension or revocation of the licenses and license rights of Respondent pursuant to Code Sections 10085, 10177(d) and 10177(g).

3.

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

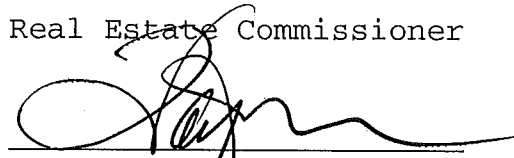
ORDER

The license and license rights of Respondent NICOLE PATRICE FUNN 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 on AUG 13 2012.

DATED: 7/13/2012

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

