

FILED

MAY 13 2013

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: James B. Mason

In the Matter of the Accusation of)	DRE No. H-38054 LA
)	OAH No. 2012050766
FIRST FEDERAL LOAN SERVICES INC , and)	
ORLANDO GUBA UNGOS, individually, and)	
Formerly as designated officer of First Federal)	
Loan Services, Inc.)	
Respondents.)	

DECISION

The Proposed Decision dated April 10, 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.

JUN 3 2013 This Decision shall become effective at 12 o'clock noon on

IT IS SO ORDERED May 6, 2013

REAL ESTATE COMMISSIONER



By: Jeffrey Mason
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation against:

FIRST FEDERAL LOAN SERVICES, INC.,
and ORLANDO GUBA UNGOS,
individually and formerly as designated
officer of FIRST FEDERAL LOAN
SERVICES, INC.,

Respondents.

Case No. H-38054 LA

OAH No. 2012050766

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on November 28 and 29, 2012, in Los Angeles, California. James Demus, Real Estate Counsel, represented Complainant Robin Trujillo, Deputy Real Estate Commissioner of the State of California (Complainant). Respondent Orlando Guba Ungos (Respondent Ungos or Ungos) represented himself. There was no appearance on behalf of Respondent First Federal Loan Services (FFL).

Oral and documentary evidence was received, and the matter was submitted for decision on November 29, 2012.

FACTUAL FINDINGS

1. Robin Trujillo, Deputy Real Estate Commissioner (Complainant), filed the Accusation in her official capacity as Deputy Real Estate Commissioner of the State of California.
2. The Department of Real Estate (DRE) issued real estate corporation license number 01868771 to FFL on August 18, 2009.
3. The DRE issued Real Estate Broker license number 0173503 to Ungos on April 12, 2006. Respondent Ungos was the designated officer of FFL for the period of August 18, 2009, to December 7, 2009, pursuant to Business and Professions Code (Code) section 10159.2.

4. During June and July of 2009, Respondent Ungos and his son Jay Ungos, had a series of meetings with Eddie Vrab (Vrab), Jessie Yeh (Yeh) and Rosie Nguyen (Nguyen) to discuss FFL, a corporation that Vrab, Yeh and Nguyen had formed and intended to license as a real estate corporation. Vrab, Yeh and Nguyen were acquaintances of Ungos' son and needed a licensed real estate broker to act as the designated corporate officer. Ungos negotiated an agreement with Vrab, Yeh and Nguyen wherein he was to be paid \$3,000 per month to supervise FFL's real estate activities.¹ According to Ungos, the parties agreed that FFL would have a compliance officer and an operations manager to oversee corporate activities on a daily basis. Additionally, FFL was to provide errors and omissions insurance to Ungos and its officers and directors. Vrab served as the operations manager, but FFL never hired a compliance officer and did not purchase the insurance as promised. Originally, FFL was only involved in real estate sales, leasing, and loan origination. The loan modification portion of the business developed later and was not part of the operation that Ungos had initially discussed with Vrab, Yeh and Nguyen. Ungos became the FFL designated officer on August 18, 2009.

5. Within a few months of joining FFL, Ungos was uncomfortable with its business practices. Ungos asked to review FFL's real estate transactions and loan modification records, but was told by Vrab that there were no transactions and no records. Ungos was not aware that Vrab, Nguyen and Yeh had hired unlicensed FFL personnel to conduct loan modification transactions or that FFL solicited prospective loan modification clients by telephone. Ungos visited the FFL office approximately twice per month. He believed his responsibilities were limited to the supervision of the licensed real estate salespersons employed by FFL. According to Ungos, the licensed real estate salespersons were Veronica Treblas, Gregg Courtis, Nguyen, Yeh, Lam Duyn Son and Margarita Gonzales. Nguyen and Yeh were also owners of FFL.

6. FFL entered into advance fee agreements for payment of compensation on loan modification transaction. FFL never submitted its advance fee agreement to the DRE for approval. Ungos was not aware that FFL needed to submit its advance fee forms to the DRE for pre-approval until late September of 2009. Ungos became aware of the requirement while attending a continuing education seminar. As a result, he advised FFL that it must have any advance fee agreements pre-approved by the DRE.

¹ At some point, the parties agreed to change the amount to \$2,000 per month because there was not much real estate activity at FFL. Ungos had difficulty collecting the amounts agreed upon from FFL and was paid a total of \$3,200 during his tenure with FFL.

Advance Fee Transactions

7. On August 1, 2009, FFL entered into an agreement with Salvador V. in which FFL agreed to negotiate a loan modification on Salvador V.'s home mortgage loan. Salvador V. made two advance fee payments to FFL. The first advance fee payment of \$2,499.25 was made on August 3, 2009, before Ungos joined FFL, and the second advance fee payment of \$1,200 was made on September 11, 2009. The loan modification advance fee was negotiated by Jesus Aguilar, an unlicensed employee of FFL. The advance fee agreement provides that the advance fee, minus a \$895 processing fee, is refundable. However, FFL refused Salvador V.'s request for a refund.

8. On September 2, 2009, FFL entered into an agreement with Apolinar G. in which FFL agreed to negotiate a loan modification on Apolinar G.'s home mortgage loan. Apolinar G. made an advance fee payment of \$3,885 to FFL on September 2, 2009. The loan modification advance fee was negotiated by David Salcido, an unlicensed employee of FFL. The advance fee agreement provides that the advance fee, minus a \$895 processing fee, is refundable. However, FFL refused Apolinar G.'s request for a refund.

9. On September 18, 2009, FFL entered into an agreement with Manuel G. in which FFL agreed to negotiate a loan modification on Manuel G.'s home mortgage loan. Manuel G. made an advance fee payment of \$3,600 to FFL on September 18, 2009. The advance fee agreement was negotiated by Sergio Salcido and David Salcido, unlicensed employees of FFL. The advance fee agreement provides that the advance fee, minus a \$895 processing fee is refundable. However, FFL refused Manuel G.'s request for a refund.

10. On October 20, 2009, FFL entered into an agreement with Ricardo L. in which FFL agreed to negotiate a modification of Ricardo L.'s home mortgage loan. Ricardo L. paid an advance fee of \$4,000 to FFL on October 20, 2009. The loan modification advance fee was negotiated by Jesus Aguilar and Sergio Salcido, unlicensed employees of FFL. The advance fee agreement provides that the advance fee, minus a \$895 processing fee. However, FFL refused Ricardo L.'s request for a refund.

11. On October 23, 2009, Ungos learned from an e-mail from the California Association of Realtors that a change in the law made advance fees unlawful effective October 11, 2009. Ungos advised FFL of this change in the law on October 23, 2009.

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12. Ungos was not aware of the advance fees paid by Salvador V., Apolinar G., Manuel G. or Ricardo L. until sometime after he disassociated from FFL on December 7, 2009. Ungos never spoke to Salvador V., Apolinar G., Manuel G. or Ricardo L., did not participate in the advance fee agreements or loan modification negotiations and was unaware of any problems associated with the transactions during his tenure at FFL.

Costs of Investigation and Prosecution

13. Complainant submitted declarations and detail of investigation and prosecution costs. According to the declaration of James A. Demus, 17.5 hours of attorney time was expended at the rate of \$89 per hour for a total of \$1,557.50 in attorney's fees in this matter. Complainant also submitted a declaration and supporting detail of investigative costs of \$792.60 for investigation. Costs in the amount of \$792.60 to investigate the case and \$1,357.25 in attorney fees to prosecute the accusation are reasonable under the provisions of Code section 10106. Accordingly, Complainant incurred \$2,149.85 in reasonable costs and fees.

LEGAL CONCLUSIONS

1. Business and Professions Code (Code) section 10159.2, subdivision (a) provides that the officer designated by a corporate broker licensee 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 real estate law, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

2. Code section 10026 provides that an advance fee is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license.

3. Code section 10085.5, subdivision (a) provides that it shall be unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property or for performing activities which require a real estate license.

4. Code section 10085.6, effective October 11, 2009, provides that it is unlawful for anyone to be paid an advance fee for the negotiation or attempts to negotiate a residential mortgage loan modification or forbearance.

5. Code section 10130 provides that it is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson without having a license.

6. Code section 10131, subdivision (b) provides that a real estate broker is a person who for compensation, or in expectation of compensation, regardless of the form or time of payment, does or negotiates to lease or rent or offer to lease or rent, or places for rent, or solicits listings of places for rent, or solicits prospective tenants, or negotiates the sale, purchase or exchanges of leases of real property, or a business opportunity.

7. Code 10131, subdivision (d) provides that a real estate broker is a person who solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

8. Code section 10131.2 provides that a real estate broker is also a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property.

9. Code section 10137 provides that it is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts which require a real estate salesperson or real estate broker's license and that it is unlawful for any real estate broker to compensate a real estate licensee except through the broker by whom he is employed.

10. Code section 10177, subdivision (d), provides that willful disregard or violation of the real estate law or the rules and regulations of the commissioner is cause for discipline.

11. Code section 10177, subdivision (g), provides that demonstrated negligence or incompetence in performing an act which requires a real estate license is cause for discipline.

12. Code section 10177, subdivision (h) provides that when a broker licensee fails to exercise reasonable supervision over the activities of his or her salesperson, or, as the officer designated by a corporate broker licensee, fails to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required, it is cause for discipline.

13. California Code of Regulations (CCR), title 10, section 2970 provides that any person that proposes to collect an advance fee shall submit to the Commissioner not less than ten calendar days before publication or other use, all

materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for an advance fee including the form of advance fee agreement proposed for use.

14. CCR, title 10, section 2725 provides that a broker shall exercise reasonable supervision over the activities of his salespersons.

15. Cause exists to discipline Respondent FFL's corporate license pursuant to Code sections 10085 and 10177, subdivisions (d) and (g), because FFL demanded and collected advance fees while Ungos was the designated officer, without using a DRE approved advance fee agreement. (Factual Findings 2-12 and Legal Conclusions 2-3, 5-11 and 13.)

16. Cause exists to discipline Respondent Ungo's real estate broker's license pursuant to Code section 10085 and 10177, subdivisions (d) and (g), because FFL demanded and collected advance fees without using a DRE approved advance fee agreement. (Factual Findings 3-12 and Legal Conclusions 2-3, 5-11 and 13.)

17. Cause exists to discipline Respondent Ungo's real estate broker license and Respondent FFL's Corporate license pursuant to Code section 10085.6 and 10177, subdivisions (d) and (g), because FFL demanded and collected an advance fee from Ricardo L. after October 11, 2009. (Factual Findings 2-12 and Legal Conclusions 3-12.)

18. Cause exists to discipline Respondent Ungo's real estate broker license pursuant to CCR, title 10, section 2725, and Code sections 10159.2, subdivision (a), and 10177, subdivisions (d), (g) and (h). As the designated corporate broker, Respondent Ungos was responsible for the supervision of the real estate activities of FFL. Respondent failed to exercise reasonable supervision over such activities resulting in the acceptance of unlawful advance fees by FFL agents and unlicensed personnel and significant financial harm to consumers. (Factual Findings 3-12 and Legal Conclusions 2-12.)

Disposition

19. Respondent Ungos, as designated corporate officer, failed to reasonably supervise the activities of FFL and to prevent unlawful activity on behalf of Respondent FFL. Respondent Ungos contends that he was only responsible for the licensed agents of FFL. However, Code section 10159.2, subdivision (a) makes it clear that a designated corporate broker, such as Ungos, is responsible for reasonable supervision of the real estate activities of the corporation. Here, the real estate activities of FFL included its loan modification activity. It is clear that the issues in the loan modification aspect of FFL's business arose from unlicensed personnel hired by FFL's owners and that FFL's owners were not honest with Ungos about the transactions that FFL conducted. Although Ungos made attempts to review records

and transactions, FFL's management was uncooperative. When he could not get answers or cooperation, took the only action he could by terminating his relationship with FFL.

20. 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.) Here, the public will be protected by suspending the license of Respondent Ungos for six months and requiring Ungos to take and pass the DRE professional responsibility examination. This will sufficiently protect the public because, Ungos was not aware of nor personally involved in any of the advance fee transactions and took action to quickly disassociate himself from FFL when he realized that he would not be allowed to appropriately supervise FFL's real estate operations.

21. The serious violations and public harm committed by Respondent FFL require revocation of the FFL corporate license in the interests of public protection..

Costs

22. Complainant established that the reasonable costs of \$2,149.85 have been incurred in this matter under the provisions of Business and Professions Code section 10106 by reason of Finding 13.

ORDER

1. All licenses and licensing rights of Respondent First Federal Loan Services, Inc. under the Real Estate Law are revoked.

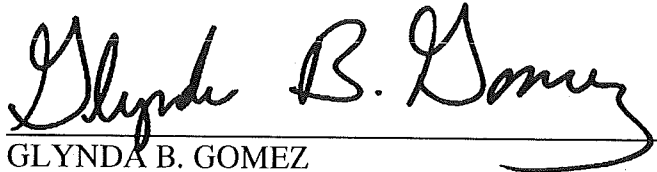
2. All licenses and licensing rights of Respondent Orlando Guba Ungos under the Real Estate Law are suspended for a period of six months commencing on the effective date of this Decision.

3. Respondent Orlando Guba Ungos 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. Should Respondent Orlando Guba Ungos fails to satisfy this condition, the Commissioner may order suspension of Respondent Orlando Guba Ungos' license until he passes the examination.

4. Respondent First Federal Loan Services, Inc. shall submit proof satisfactory to the Commissioner of payment of investigative and prosecution costs in the amount of \$1,074.83 within six months of the effective date of this decision.

5. Respondent Orlando Guba Ungos shall submit proof satisfactory to the Commissioner of payment of investigative and prosecution costs in the amount of \$1,074.82 within six months of the effective date of this decision.

Dated: April 10, 2013

A handwritten signature in cursive script that reads "Glynda B. Gomez". The signature is written in black ink and is positioned above a horizontal line.

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings