

FILED

APR 24 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation:)	CalBRE No. H-38336 LA
RICARDO VALEGA)	OAH No. 2013020353
Respondent.)	

DECISION

The Proposed Decision dated March 13, 2014, 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.

The Decision suspends or revokes one or more real estate licenses.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on MAY 15 2014.

IT IS SO ORDERED APRIL 22, 2014.

REAL ESTATE COMMISSIONER


Wayne S. Bell

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation of

RICARDO VALEGA,

Respondent.

Case No. H-38336 LA

OAH No. 2013020353

PROPOSED DECISION

Administrative Law Judge Laurie R. Pearlman, State of California, Office of Administrative Hearings, heard this matter on January 28, 2014, in Los Angeles, California.

Lisette Garcia, Staff Counsel, Bureau of Real Estate (Bureau), represented Complainant, Maria Suarez, Deputy Real Estate Commissioner (Complainant).

Respondent Ricardo Valega was present at the hearing and was represented by James E. Griswold, Attorney-at-Law.

Oral and documentary evidence was received, and argument was heard. The record was left open until February 11, 2014, to allow Respondent to submit additional documents and to allow Complainant to respond. Respondent submitted a cover letter (marked as Exhibit F for identification, but not admitted into evidence) with copies of email correspondence between him and a Bureau Investigator (marked as Exhibit D for identification) and a title report (marked as Exhibit E for identification.) Complainant filed an objection to Exhibit E on the grounds of lack of foundation, lack of authentication and hearsay (marked as Exhibit 10 for identification, but not admitted into evidence.) Exhibit D was admitted into evidence and Exhibit E was admitted into evidence as administrative hearsay. The record was closed, and the matter was submitted for decision on February 11, 2014.

FACTUAL FINDINGS

1. Complainant acted solely in an official capacity for the Bureau in bringing this Accusation.
2. Respondent was originally issued a real estate salesperson license on October 6, 2007. In 2009, he was licensed under the employment of real estate broker Realty Options

Plus, Inc., located in Santa Ana, California. Respondent's salesperson license will expire on October 5, 2015.

3. Sylvia Grabiela S. Romero and Maria Lourdes Mutuc are owners of S.M.Y. Legal Services, aka S.M.Y. Paralegal Services (S.M.Y.). Romero, Mutuc and S.M.Y. are not licensed in any capacity by the Bureau.

4. On November 7, 2009, Respondent, while working on behalf of S.M.Y., solicited and offered to assist borrower Isidro C.¹ (homeowner) with loan modification and negotiation services in connection with a home loan. Isidro C. entered into a written advance fee agreement with S.M.Y. for loan modification and negotiation services in connection with a loan secured by a lien on real property. The homeowner paid an advance fee of \$3,600 to S.M.Y. for loan modification and negotiation services. S.M.Y. failed to perform the loan modification and negotiation services that had been promised to Isidro C.

5. At the time of the transaction that forms the basis for the Accusation, Respondent worked as a salesperson for Realty Options Plus. Respondent's broker there, Alfredo Jose Sousa, had no connection or business relationship with S.M.Y. and had no knowledge of Respondent's actions on behalf of S.M.Y.

6. Isidro C. filed a complaint with the Bureau in April 2010. He stated that he contacted S.M.Y. after hearing a radio promotion for home loan modification on a Spanish-language radio station. S.M.Y. sent Respondent to meet with him in his home in Seaside, California on November 7, 2009. Respondent showed the homeowner various programs he could qualify for in order to obtain a loan modification. The homeowner gave Respondent \$3,600 in money orders and Respondent signed him up for a home loan modification program. However, S.M.Y. provided no loan modification services to the homeowner and one month later, Isidro C. began to receive foreclosure notices from his lender. S.M.Y. did not return calls from the homeowner. After he left messages demanding a refund, S.M.Y. disconnected its telephone.

7. On January 26, 2011², the Bureau sent a letter to Respondent, stating that it was its understanding that he had acted as an agent of S.M.Y. on November 7, 2009, in connection with a contract signed by Isidro C. The Bureau asked Respondent to provide a "written chronological version of the subject transaction in order that we may consider all pertinent facts in our inquiry." In response, Respondent sent a letter to the Bureau dated February 2, 2011, in which he stated that, "I don't recall the specific details of that transaction, however, I can tell you that during that time period my work with S.M.Y. Legal services [*sic*] centered on loan audits to see if they were a victim of predatory lending." Respondent added that it was his custom to meet potential S.M.Y. clients in their homes, explain the services provided, and review the S.M.Y. contract with them. If they decided to

¹ Only the first initial of the homeowner's last name is used in order to protect his privacy. His first name is misspelled in the Accusation as Ysidro.

² The letter was incorrectly dated January 26, 2010.

pursue an audit of their home loan, Respondent would have the client sign the contract and give him a check for \$3,600, payable to S.M.Y. In his letter, Respondent stated that he would then deliver the paperwork to S.M.Y. without retaining any copies for himself. (Exhibit 6.)

8. Respondent testified at the hearing. He is 40 years old, moved to the United States from Peru eight or nine years ago, is married and has two young children. Respondent claimed that someone else wrote the February 2, 2011 letter on his behalf and that it does not accurately describe his role. He testified that he never worked for S.M.Y., but did obtain work for a company affiliated with it "maybe through an ad or referral." He could not recall the full name of the other company, but stated that it was "Vision something" and was located in Torrance. Respondent insisted that he only worked as a courier for Vision, which he "believed to be a law firm or legal network." He did not work set hours, but would get a random telephone call giving him a date, time and person to see. Vision sent Respondent a check in the mail for a flat fee of \$300 after he had picked up a signed contract and a check for \$3,600, made out to S.M.Y. Respondent was paid the same \$300 fee, regardless of whether the destination to which he was sent was nearby or several hours away. Respondent stated that he "was not there in a real estate capacity" and he never identified himself to homeowners as a licensed real estate salesman. Respondent carried out this work for Vision for two or three months and went to about 20 or 25 homes on their behalf. After the Bureau contacted Respondent regarding Isidro C.'s complaint, he attempted to contact Vision, but the company did not return his phone calls and stopped giving him assignments. Respondent eventually repaid \$3,600 to Isidro C. in installments, despite the fact that he "was repaying money others had received."³ Respondent stated that he is familiar with loan modifications and was aware that real estate licensees are prohibited from charging homeowners "up-front fees" for this, but said that he believed that attorneys could do so.

9. Respondent's testimony, in which he downplays his role, was self-serving and not credible. His assertion that he was paid \$300 merely to act as a courier for a vaguely named legal network of some sort is simply not persuasive. This version of events does not comport with the homeowner's description of Respondent's role. It also conflicts with his own more contemporaneous description of his actions, as set out in his February 2011 letter to the Bureau. Respondent asserts that his role was minor and his financial profit was negligible. Nevertheless, he played a role in soliciting victims on behalf of a company that defrauded desperate homeowners by carrying out a loan modification scam. He engaged in activities for which he was not licensed and worked for a company that was engaged in real estate activities, but did not have a license to do so. Additionally, Respondent accepted compensation from a person other than the broker under whom he was licensed as a real estate salesperson.

³ It appears that Respondent was under the mistaken belief that if he repaid the homeowner, no disciplinary action would be taken against his license, based on communications he had with an investigator for the Bureau.

10. The Bureau submitted declarations in support of its request for recovery of costs incurred in the investigation and review of this case. The Bureau seeks \$1,880.70 for work performed by its investigators, and \$1,290.50 for work performed by its staff counsel. These amounts, totaling \$3,171.20 are reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code (Code) section 10085 provides that all materials used in obtaining an advance fee, including a written agreement, must be approved by the real estate commissioner before use.

2. 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.

3. Code section 10132 defines a real estate salesperson as one who, for a compensation or in expectation of compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6.

4. Code section 10137 provides that no real estate salesperson shall be employed by, or accept compensation from, any person other than the broker under whom he is licensed.

5. Code section 10131.2, subdivision (d), defines a real estate broker as one who solicits borrowers, negotiates loans, collects payments or performs services for borrowers in connection with loans secured directly or collaterally by liens on real property.

6. 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.

7. 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.

8. Code section 10106 provides that the Administrative Law Judge may order a Respondent in a disciplinary action to pay the reasonable costs of investigation and prosecution.

9. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.2d 99, 113; Evid. Code § 115.) Since this is an accusation, Complainant has the burden of proof. The standard of proof is clear and convincing evidence. Relative to other professions, the sale of real estate requires extensive

educational, training and testing requirements. A licensee thus has a strong interest in retaining the license that he or she has expended so much effort in obtaining. (*Ettinger v. Board of Medical Quality Assurance* (1982) 139 Cal.App.13d 853; 856-857; *James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1105.) Complainant met her burden of establishing her case by clear and convincing evidence.

10. Respondent and S.M.Y. collected advance fees from Isidro C. pursuant to the provisions of a written agreement, which constitutes an advance fee agreement within the meaning of Code section 10085. Code sections 10131, subdivision (d) and 10131.2 authorize only brokers to collect advance fees or negotiate loans for borrowers in connection with loans secured by liens on real property. Respondent and S.M.Y. acted as real estate brokers within the definition of Code sections 10131, subdivision (d) and 10131.2, without being licensed by the Bureau as brokers.

11. Cause exists to discipline Respondent's real estate salesperson license pursuant to Code section 10130 in conjunction with Code section 10177, subdivision (d), by reason of Factual Findings 1 through 9 and Legal Conclusions 1 through 10, inclusive, in that Respondent was engaged in activities that required a broker's license, including collecting payments in connection with loans secured by liens on real property.

12. Cause exists to discipline Respondent's real estate salesperson license pursuant to Code section 10137 in conjunction with Code section 10177, subdivision (d), by reason of Factual Findings 1 through 9 and Legal Conclusions 1 through 10, inclusive, in that Respondent accepted compensation from a person other than the broker under whom he was licensed at the time.

13. Cause does not exist to discipline Respondent's real estate salesperson license pursuant to Code section 10130 in conjunction with Code section 10177, subdivision (g), in that Complainant failed to present sufficient evidence to establish that Respondent demonstrated negligence or incompetence in performing an act for which he is required to hold a license when he engaged in activities that required a broker's license, including collecting payments in connection with loans secured by liens on real property.

14. Cause does not exist to discipline Respondent's real estate salesperson license pursuant to Code section 10137 in conjunction with Code section 10177, subdivision (g), in that Complainant failed to present sufficient evidence to establish that Respondent demonstrated negligence or incompetence when he accepted compensation from a person other than the broker under whom he was licensed at the time.

15. Cause exists to award Complainant costs, as set forth in Factual Finding 10 and Legal Conclusion 8.

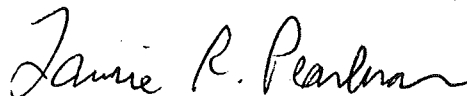
16. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Respondent has demonstrated a willingness to violate basic laws and practices essential to the real estate profession. He engaged in unlicensed activity and accepted advance fees in contradiction of the law. Respondent took money from a homeowner while working for an unlicensed entity that was not his employing broker, and he profited from the arrangement. This caused financial harm to a homeowner, and although Respondent repaid the homeowner, he did so because he thought that it would enable him to avoid discipline by the Bureau. Most significantly, Respondent does not express any remorse or understanding of the wrongfulness of his actions and has not presented facts establishing rehabilitation. For the foregoing reasons, the interests of public protection require that Respondent's real estate salesperson license be revoked.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. All licenses and licensing rights of Respondent Ricardo Valega are revoked.
2. Within six months of the effective date of this Decision, Respondent shall pay \$3,171.20 in investigation and prosecution costs to the Bureau. If the Bureau establishes other payment terms, Respondent shall comply with those terms.

DATED: March 13, 2014



Laurie R. Pearlman
Administrative Law Judge
Office of Administrative Hearings