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FILED

APR 07 2014

BUREAU OF REAL ESTATE

By *J. Remoh*

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	CalBRE No. H-38880 LA
ANGIE MARY GARCIA,)	OAH No. 2013070731
)	
Respondent.)	
)	

ORDER DENYING MOTION TO VACATE AND SET ASIDE THE DECISION AND
DENYING RECONSIDERATION

On February 4, 2014, a Decision was rendered in the above-entitled matter. The Decision was to become effective on February 26, 2014, and was stayed by separate Orders to April 7, 2014.

On February 18, 2014, the Bureau received Respondent's Motion to Vacate the Real Estate Commissioner's Decision of February 4, 2014 pursuant to Government Code Section 11520. On February 22, 2014, Respondent petitioned for reconsideration of the Decision of February 4, 2014.

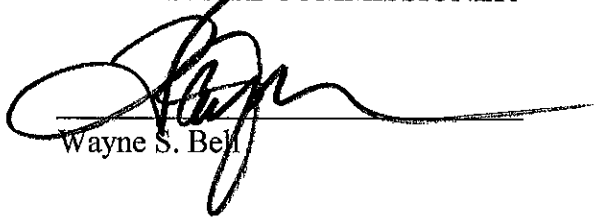
I have given due consideration to the Motion to Vacate and to the petition of Respondent. I find no good cause to vacate or reconsider the Decision of February 4, 2013, and Respondent's motion to vacate and petition for reconsideration are hereby denied.

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Therefore, the Decision of the Real Estate Commissioner of February 4, 2014,
shall become effective at 12 o'clock noon on APR 28 2014.

IT IS SO ORDERED 4/7/2014.

REAL ESTATE COMMISSIONER

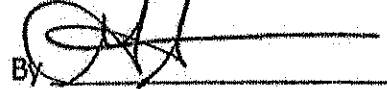


Wayne S. Bell

FILED

March 27, 2014

BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-38880 LA
)	OAH No. 2013070731
)	
ANGIE MARY GARCIA,)	
)	
)	
<u>Respondent</u>)	

ORDER STAYING EFFECTIVE DATE

On February 4, 2014, the Real Estate Commissioner rendered a Decision in the above-entitled matter to become effective February 26, 2014. The Decision was stayed for thirty (30) days by separate order, and becomes effective on March 28, 2014 at Noon.

IT IS HEREBY ORDERED that the effective date of the Decision of February 4, 2014 is stayed for an additional ten (10) days.

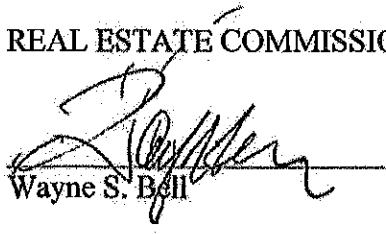
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The Decision of February 4, 2014, shall become effective at 12 o'clock noon on
April 07, 2014.

DATED: 3/27/2014

REAL ESTATE COMMISSIONER

By: 
Wayne S. Bell

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IT IS HEREBY ORDERED that the effective date of the Decision of February 4, 2014 is stayed for a period of 30 days to allow Respondent ANGIE MARY to file a petition for reconsideration, and to allow the agency to respond to both the motion to set aside and Respondent's Petition for reconsideration.

The Decision of February 4, 2014, shall become effective at 12 o'clock noon on March 28, 2014.

DATED: FEBRUARY 25, 2014

WAYNE S. BELL
Real Estate Commissioner

By: Phillip Ihde
PHILLIP IHDE
Regional Manager

FILED

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

FEB 05 2014

BUREAU OF REAL ESTATE

By *[Signature]*

* * * * *

In the Matter of the Accusation of)	CalBRE No. H-38880 LA
)	
ANGIE MARY GARCIA,)	OAH No. 2013070731
)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated January 21, 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 on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension 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 _____

FEB 26 2014

FEB 04 2014

IT IS SO ORDERED _____

REAL ESTATE COMMISSIONER

[Signature]

By: **JEFFREY MASON**
Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

Case No. H-38880 LA
OAH No. 2013070731

ANGIE MARY GARCIA

Respondent.

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on December 12, 2013, in Los Angeles, California. Martha Rosette, Real Estate Counsel, represented Complainant. There was no appearance by or on behalf of Respondent Angie Mary Garcia (Respondent). Oral and documentary evidence was received, and argument was heard. The record was left open until December 19, 2013 for the submission of an additional costs declaration by Complainant. On December 19, 2013, Complainant submitted a "Supplemental Cost Declaration" which was received, marked and admitted as exhibit 12.¹ The matter was submitted for decision on December 19, 2013.

FACTUAL FINDINGS

1. Maria Suarez, Deputy Real Estate Commissioner (Complainant), filed the Accusation in her official capacity on May 17, 2013. The Accusation concerns allegations made against Respondent about the handling the short sale, purchase, negotiation and fees associated with a residential property located at 2793 Waxwing Circle, Costa Mesa, California (the Property).
2. The Department of Real Estate (now Bureau of Real Estate (BRE)) issued a real estate salesperson license to Respondent on December 13, 1994. The license expires on

¹ Complainant's counsel wrote a letter dated December 13, 2013, jointly addressed to the ALJ and Robert Williams, a lawyer that had represented Respondent, concerning Complainant's rejection of a settlement agreement that she received from Respondent after the December 12, 2013 hearing. The letter was not considered because it was not relevant to the issues presented for hearing and the record on the matter was closed except for the submission of a supplemental costs declaration.

December 12, 2014.

3. From April 16, 2010 to March 17, 2011, Respondent was employed by Republic Realty Service, Inc. doing business as ReMax Metro Real Estate Services (Remax) which was her supervising broker of record. Paul Flores was the designated broker-officer responsible for the supervision of the activities of the officers, agents, and employees of, and real estate licensees employed by Remax.

4. On April 9, 2010, Respondent negotiated a sales listing agreement with MO and MV (Sellers) to sell the Property. The listing price was \$699,000 and the listing agreement was also contingent upon short-sale approval.² The agreement specified a six percent broker's commission for the sale of the Property.

5. The Property was taken off the market shortly after listing because the Sellers sought, but did not receive, a loan modification. During the brief time that the Property was on the market, Respondent showed the Property to CT and MT (Buyers). Buyers liked the property and were disappointed that it had been taken off the market.

6. On August 27, 2010, Respondent relisted the Property as a short sale with a listing price of \$699,000. Buyers immediately contacted Respondent on August 27, 2010 to determine whether or not the Property was available. Respondent advised them that the Property was available and offered to show it to them. Respondent showed the property to Buyers who were excited and planned to make an immediate offer on the property. Buyers had planned to use their own real estate salesperson, but Respondent told them that she would accept other offers on the property if the offer was made through anyone else. Respondent advised Buyers that if she handled the transaction, she would position their offer such that they would get the property. Respondent insisted that she represent both parties in any sale of the Property. Respondent made it clear to Buyers that the property would likely be sold to someone else if she was not the representative for both parties. Buyers did not want Respondent to represent them, but wanted to purchase the Property. Reluctantly, and on the advice of their own real estate salesperson, Buyers made an offer on the Property with Respondent as their agent.

7. On August 27, 2010, Buyers signed a "Short Sale Addendum," making a purchase offer of \$620,000 subject to short sale approval by the Sellers' lender.

8. Sellers presented a counter offer to Buyers and on September 10, 2010, Buyers signed the counter offer and entered into a purchase agreement for the Property with Respondent as the agent for both the Sellers and the Buyers. The agreed upon purchase price was \$620,000 subject to lender approval.

9. The purchase agreement contained the following express provision:

² A short sale is a sale of real property for less than the amount owed to the lender, with the lender's approval.

[p]roperty being sold as is and buyer to pay for any third party fees incurred by seller but not paid by seller/short sale lender included but not limited to property taxes sellers title fees, liens, negotiation fee, sellers escrow fees in a total amount not to exceed 10,000.

10. Respondent advised Buyers that they might have to pay a "third party negotiation fee" for the transaction. She told them that if the "third party negotiation fee" was required, that Barringer Escrow would be the negotiation firm. Buyers signed a HUD-1³ statement on October 25, 2010 which contained a line item: "Negotiation Fee: To follow" in the amount of \$5,500. Respondent never told the Buyers, Sellers or lender that she would be the recipient of a "third party negotiation fee."

11. On October 4, 2010, the Sellers' lender approved the short sale of the Property subject to terms and conditions including:

Closing costs have been negotiated and agreed upon with the authorized agent as of October 4, 2010

- a. Total Closing Costs not to exceed \$50,246.18
- b. Maximum commission paid \$37,200.00

12. Escrow opened on October 7, 2010. Barringer Escrow, an independent escrow company licensed by the Department of Corporations, was the closing agent for the transaction. The disclosures signed by the Sellers reflected commissions to be paid to Remax as agent of the Buyer and Seller, for a total of \$37,200.

13. On October 12, 2010, the lender approved an extension of the time from October 27, 2010 to November 15, 2010 for the Buyers and Sellers to close the sale of the Property. The October 12, 2010 letter confirming the extension of time, reiterated the conditions set forth above in Factual Finding 11.

14. Escrow closed on October 27, 2010. On that date, Respondent was paid \$5,500 directly from escrow pursuant to her invoice to Barringer Escrow dated October 26, 2010 for a negotiation fee on the Property. The negotiation fee paid to Respondent was not disclosed to the Buyers or Sellers prior to payment. On October 28, 2010 two commission checks for \$18,600 each were paid to ReMax as commission for representation of each party in the transaction. Respondent's supervising broker was not aware of the additional "third party negotiation fee." The \$5,500 payment to Respondent exceeded the six percent maximum authorized in the listing agreement and the \$37,200 limit set forth in the Lender's

³ On loans for one to four family unit residential property, a Good Faith Estimate of estimated costs a final HUD-1 or Final Settlement Statement are required by the United States Department of Housing and Urban Development (HUD) under the terms of the Real Estate Settlement Procedures Act (RESPA).

short sale approval letter.

Costs

15. Complainant produced a declaration of Bureau District Manager Maria Suarez (Exhibit 10) which claimed 39.55 hours of staff time including 1.5 hours by Linda K. Klebs, 12.3 hours by Jagat Kooner, and 26.25 hours by Eleazor Galano each at the rate of \$62 per hour. The attachment placed a total value of \$2,451.85 on Complainant's time expenditures. Although, Complainant's attorney, Martha Rosette, provided a declaration regarding enforcement costs and attorney time (Exhibit 12), the declaration did not provide any information specifying the hourly rate, number of hours expended, tasks completed or amount claimed. Accordingly there is an insufficient basis to determine attorneys fees incurred by Complainant and none are awarded. The unsigned supplemental declaration of Maria Suarez included in Exhibit 12 does not provide any evidence of additional time expended in excess of the 39.55 hours set forth in Exhibit 10. Accordingly, Complainant incurred \$2,451.85 in reasonable costs of investigation and prosecution of this matter:

16. There was no evidence of Respondent's inability to pay the costs.

DISCUSSION AND LEGAL CONCLUSIONS

1. Respondent's real estate salesperson license is subject to discipline pursuant to Business and Professions⁴ Code section 10176, subdivision (a), based upon factual findings 2-14, based upon her misrepresentation of the true amount of her compensation.

2. Respondent's real estate salesperson license is subject to discipline pursuant to Code section 10176, subdivision (g), based upon her taking of undisclosed profit of \$5,500 and failing to disclose the full amount of compensation she received to her broker by reason of factual findings 2-14.

3. Respondent's real estate salesperson license is subject to discipline pursuant to Code sections 10176, subdivision (i) and 10177, subdivision (j) based upon her fraud and dishonest dealings in the handling of the sale of the Property and the taking of an undisclosed fee by reason of factual findings 2-14.

4. Respondent's real estate salesperson license is subject to discipline pursuant to Code section 10177, subdivision (d) and Code section 10177, subdivision (j) in conjunction with Code section 10137 based upon her willful disregard for the real estate law as demonstrated by the taking of the undisclosed \$5,500 fee by reason of factual findings 2-14.

5. 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;

⁴ Hereinafter all references to Code are to the Business and Professions Code unless otherwise specified.

Camacho v. Youde (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Here, Respondent's fraud and flagrant violations of fundamental tenets of the real estate law and require that her real estate salesperson license be revoked in order to protect the public from future harm.

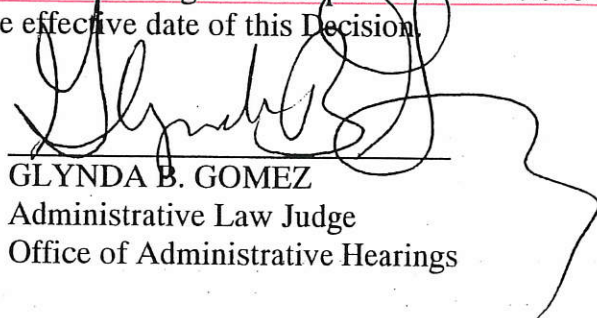
6. Code section 10106 provides that the Administrative Law Judge may order that a respondent in a disciplinary action pay the reasonable costs of investigation and prosecution. Here, the reasonable costs of investigation and prosecution are \$2,451.85. (Factual Findings 15-16.)

ORDER

1. All real estate licenses and licensing rights of Respondent Angie Mary Garcia are hereby revoked.

2. Respondent shall pay \$2,451.85 in investigative and prosecution costs to the Bureau of Real Estate within 90 days of the effective date of this Decision.

DATED: January 21, 2014



GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings