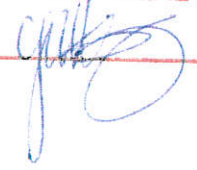


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JAN 15 2016

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	CalBRE No. H-38935 LA
ARGON ENTERPRISES, INC., doing	)	OAH No. 2014110851
business as Pacific Properties Realty, Pacific	)	
Home Lenders, and Coastline Escrow;	)	
ARMANDO GONZALEZ, individually and as	)	
designated officer of Argon Enterprises, Inc.,	)	
ISSAC CHIJOKE EZEANIOMA,	)	
<u>Respondent.</u>	)	

DECISION

The Proposed Decision dated December 9, 2015 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.

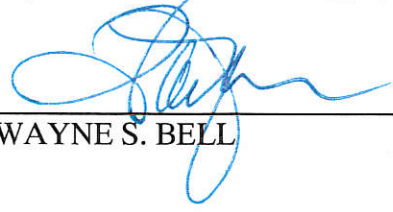
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent Issac Chijioke Ezeanioma.

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 FEB - 4 2016.

IT IS SO ORDERED 1/4/ 2016

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 Against:

ARGON ENTERPRISES INC. doing business
as Pacific Properties Realty, Pacific Home
Lenders, and Coastline Escrow;

ARMANDO GONZALEZ, individually and
as designated officer of Argon Enterprises,
Inc.; and

ISSAC CHIJOKE EZEANIOMA,

Respondents.

Case No. H-38935 LA

OAH No. 2014110851

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on November 9, 2015 in Los Angeles, California. Lisette Garcia, Real Estate Counsel, represented Complainant. Respondents Argon Enterprises Inc. (Respondent Argon) and Armando Gonzalez (Respondent Gonzalez) did not appear and were not otherwise represented. Respondent Issac Chijioke Ezeanioma (Respondent Ezeanioma) was self-represented. Oral and documentary evidence was received, argument was heard, and the matter was deemed submitted on November 9, 2015.

FACTUAL FINDINGS

1. Robin Trujillo, Deputy Real Estate Commissioner (Complainant), filed the Accusation in her official capacity.
2. The Bureau of Real Estate (formerly Department of Real Estate) (BRE) issued real estate corporation license number c/01522809 to Respondent Argon with Respondent Gonzalez as its designated broker-officer on March 2, 2006. Respondent Gonzalez has remained the designated broker-officer at all relevant times. The license will expire on March 1, 2018, unless renewed.

3. The BRE issued real estate broker license number B/01310018 to Respondent Gonzalez on January 29, 2004. The license will expire on January 28, 2016, unless renewed.

4. The BRE issued conditional real estate salesperson license number S/01763033 to Respondent Ezeanioma on October 20, 2006. On August 28, 2007, Respondent Argon became Respondent Ezeanioma's employing broker. On April 20, 2008, Respondent Ezeanioma's conditional salesperson license expired and his employment was discontinued from Respondent Argon. The salesperson license was suspended indefinitely pursuant to Business and Professions code section 10153.4, subdivision (c), effective April 21, 2008. The salesperson license was reinstated effective December 8, 2008 without a broker affiliation. The salesperson license expired again on October 19, 2010 and was later renewed late on June 7, 2011 without a broker affiliation. The license expired on June 6, 2015 and has not been renewed.

5. At all times, Respondents Argon and Gonzalez acted as real estate brokers and mortgage loan brokers and conducted licensed activities. Respondent Argon also conducted broker-controlled escrows through its escrow division, Coastline Escrow, under the exemption set forth in the California Financial Code for real estate transactions where the broker is a party and where the broker is performing acts for which a real estate license is required.

6. On July 20, 2012, the BRE conducted a broker office survey of the books and records of Respondent Argon pertaining to the residential resale, mortgage loan brokerage and broker-controlled escrow activities which require a real estate license. The broker officer survey revealed the following:

a. Respondents Argon and Gonzalez failed to maintain a control record in the form of a columnar record in chronological order for Respondent Argon's trust funds related to Respondent Argon's in-house escrow operation.

b. Respondents Argon and Gonzalez failed to maintain a separate record for each beneficiary or transaction for trust funds related to the in-house escrow operation.

c. Respondents Argon and Gonzalez failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records with the record of all trust funds received and disbursed by Respondent Argon's escrow operation.

d. Respondents Argon and Gonzalez permitted Vivian Cabrera, a real estate salesperson and escrow officer, not licensed under either Respondent Argon or Respondent Gonzales, to be an authorized signatory on the escrow trust account for Respondent Argon. Vivian Cabrera was not licensed as an escrow officer and was not bonded.

e. Respondents Argon and Gonzalez failed to maintain the office, place of books, records, accounts, safes, files and papers relating to Respondent Argon's escrow operation accessible for review by the Real Estate Commissioner.

f. Respondents Argon and Gonzalez failed to include the statement of the negotiability of real estate commissions in some of the Residential Listing Agreements and Residential Purchase Agreement and Joint Escrow Instructions in no less than 10-point boldface type.

g. Respondent Gonzalez failed to exercise reasonable control and supervision over the activities conducted by Respondent Ezeanioma, an Argon employee, when it allowed him to operate as a real estate salesperson in its employee without notifying the BRE of the affiliation.

Respondent Ezeanioma's Transactions

7. On February 1, 2010, Karen Smith¹ entered into a Residential Listing Agreement (Listing Agreement) for property located at 7814 Halldale Avenue, Los Angeles, California (the Property). Respondent Ezeanioma represented Karen Smith as the listing agent on behalf of Respondent Argon.² Real estate salesperson Sue Trainoff represented the buyer in the transaction. The property was sold as part of a short sale transaction. In a short sale transaction, the lender permits a property to be sold in an arms-length transaction to a third party for less than the debt owed to the lender. Generally, short sale transactions contracts contain a provision that the property owner not receive any of the proceeds from the sale transaction. Respondent Ezeanioma testified that Ms. Trainoff handled the entire sales transaction because she was a specialist in short sales. Respondent Ezeanioma received a commission on the transaction paid to him by Respondent Argon

8. At all times, Respondent Ezeanioma believed and operated with the understanding that his license was properly affiliated with Respondent Argon. Respondent Ezeanioma did not affirmatively take action to remove his license from Respondent Argon or to reinstate the license with Respondent Argon and Armando Gonzales as broker of record when his license was reinstated from suspension in 2008. There was no evidence that Respondent Armando Gonzales or Respondent Argon ever requested that Respondent be removed or that either knew Respondent Ezeanioma's license had been reinstated in non-working status by the BRE. Respondent Ezeanioma assumed that his real estate salesperson license was reinstated to its prior condition and affiliation and did not realize that the BRE had designated his license as being in non-working status and without an affiliated broker.

¹ Respondent Karen Smith was a real estate salesperson employed by Respondent Argon at all relevant times.

² At hearing, Respondent Ezeanioma also claimed that he had an unrecorded ownership interest in the property as an investor. Respondent offered no documentary evidence to corroborate his testimony on this point.

Respondent Ezeanioma had an employment agreement with Respondent Argon for the relevant time period.

Costs

9. Complainant produced a declaration of BRE Supervising Special Investigator II, Maria Suarez which described 33.15 hours of investigative time by BRE Special Investigator Summer Bakotich at \$62 per hour; 3.05 hours of time expended by Supervising Investigators Howard Alston and Robin Trujillo at \$80 per hour; and .50 hours of time expended by program technician Tuesday Cabines at \$37 per hour. The investigative costs amounted to a total of \$2,268.30. Complainant also submitted a declaration of its counsel Lisette Garcia setting forth 12.10 hours expended at the rate of \$89 per hour. Taken together, Complainant established that \$3,345.20 was expended in prosecution and investigation of this matter. The costs are deemed reasonable.

10. No evidence was introduced to establish the ability or lack of ability of Respondents Armando Gonzales and Argon to pay costs of investigation and prosecution of this matter. Respondent Ezeanioma is a retired. His sole source of income is currently his social security pension. The real estate transaction described in factual finding 7 above was the last transaction that Respondent Ezeanioma handled as a licensee.

LEGAL CONCLUSIONS

1. Business and Professions Code (Code) section 10137 provides that it is unlawful for any real estate broker to employ or compensate, directly or indirectly, any person for performing any acts which require a real estate license unless the compensated person is licensed by the BRE and employed by the broker. Code section 10137 also provides that a real estate salesperson is also prohibited from accepting compensation, for acts requiring a real estate license, from any person other than the broker under whom he or she is licensed.

2. Code 10159.2, subdivision (a), provides that a designated officer of a corporate broker 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.

3. Code section 10145 requires that a real estate broker who accepts funds belonging to another in connection with a transaction keep the funds separate, distinct and apart from funds belonging to the broker or others, that the broker maintain a separate record of the receipt and disposition of all funds, and comply with the regulations concerning such funds.

4. Code section 10147.5, subdivision (a), requires that a statement regarding the negotiability of real estate commissions in 10 point boldface type is required in Residential

Real Estate Listing Agreements, Residential Purchase Agreements and Joint Escrow Instructions.

5. Code section 10177, subdivision (d), provides in pertinent part that the Commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has willfully disregarded or violated the Real Estate Law or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law.

6. Code section 10177, subdivision (g), provides in pertinent part that the commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

7. Code section 10177, subdivision (h), provides that failure of a designated corporate officer of a corporate broker licensee, to exercise reasonable supervision over the activities of his or her salespersons and the activities of the corporation for which a real estate license is required constitutes grounds for discipline.

8. California Code of Regulation, title 10 (CCR), section 2725 provides that a broker shall exercise reasonable supervision over the activities of his or her salesperson and shall have a system of monitoring compliance.

9. CCR, section 2831, subdivision (a), provides that:

Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

- (1) Date trust funds received.
- (2) From who trust funds received.
- (3) Amount received.
- (4) With respect to funds deposited in an account, date of said deposit.
- (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
- (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
- (7) Daily balance of said account.

10. CCR, section 2831.1, provides that with respect to trust funds, a separate record for each beneficiary or transaction must be maintained including the date of any deposit, amount of deposit, dates, check numbers and amounts of each disbursement, dates

and amounts of interest earned and credited to the account, and balance after posting transactions.

11. CCR, section 2831.2, requires that trust accounts must be reconciled, and funds disbursed monthly, except when an account has no activity.

12. CCR, section 2834, provides that trust account withdrawals from a corporate broker's trust account may only be made by an officer through whom the corporation is licensed, a salesperson licensed to the corporate broker, a real estate broker who has entered into a written agreement as specified by law, or an unlicensed employee of the corporate broker who is covered by a fidelity bond in an amount equal to the maximum amount of trust funds to which the employee has access.

13. CCR, section 2950, subdivision (d), provides that failing to maintain escrow books, records, and accounts in accordance with accepted principles of accounting and good business practice is grounds for discipline.

14. CCR, section 2590, subdivision (e), provides that failing to maintain the office, place of books, records, accounts, safes, files and papers relating escrows freely accessible and available for audit, inspection and examination by the commissioner is grounds for discipline.

First Cause for Discipline (Broker Office Survey)

15. Cause exists, pursuant to Code section 10177, subdivisions (g) and (h), in conjunction with Code sections 10131, 10145, 10145.7, 10159.2 and CCR, sections 2725, 2831, 2831.1, 2831.2, 2834, 2950, subdivisions (d) and (e), and 2951 to discipline Respondent Gonzales' real estate broker's license and Respondent Argon's real estate corporation license based upon the results of the BRE's broker office survey. Respondents Argon and Gonzalez failed to maintain the appropriate required trust fund records and failed to supervise Respondent Ezeanioma, by reason of factual findings 1-8.

Second Cause for Discipline (Payment of Non-Affiliated Real Estate Salesperson.)

16. Cause for discipline of Respondent Gonzales' Real Estate Broker license and Respondent Argon's corporate real estate license and Respondent Ezeanioma's real estate salesperson license exists pursuant to Code section 10137 by reason of Respondent Argon's payment of commission to Respondent Ezeanioma, and his acceptance of payment, when he was not listed with the BRE as being affiliated with Respondents Gonzalez and Argon by reason of factual findings 6g, 7 and 8.

Third Cause for Discipline (Negligence)

17. Cause for discipline of Respondent Gonzalez's Real Estate Broker's license, Respondent Argon's corporate real estate license, and Respondent Ezeanioma's real estate

salesperson license exists pursuant to Code section 10177, subdivision (g), by reason of the negligence of Respondents Gonzales and Argon in the maintenance of trust fund records and supervision of Respondent Ezeanioma by reason of factual findings 1-8 and by reason of Respondent Ezeanioma's negligence in conducting a real estate transaction without properly affiliating his real estate salesperson license with Respondent Argon. (Factual Findings 7 and 8.)

Fourth Cause for Discipline (Breach of Fiduciary Duty)

18. Cause for discipline of Respondent Gonzalez's Real Estate Broker license and Respondent Argon's corporate real estate license exists pursuant to Code section 10177, subdivision (g), based upon Respondents' failures to maintain proper trust fund records by reason of factual findings 1-6 and failure to supervise Respondent Ezeanioma by reason of factual findings 6g, 7 and 9. Cause for discipline of Respondent Ezeanioma's real estate sales person license exists pursuant to Code section 10177, subdivision (g) by reason of factual findings 6g, 7 and 8 based upon his serving as the listing agent on a real estate transaction without having a broker affiliation.

Fifth Cause for Discipline (Supervision and Compliance)

19. Cause for discipline of Respondent Gonzalez's Real Estate Broker license exists pursuant to Code sections 10177, subdivisions (d), (g), and (h) in conjunction with Code section 10159.2 and CCR section 2725 based upon his failure as the designated officer of a corporate broker license, to exercise reasonable supervision and control over the licensed activities of Argon by reason of factual findings 6g, 7 and 8.

20. As cause for discipline of Respondents' real estate licenses has been established, respondents bear the burden of proving sufficient rehabilitation to warrant continued licensure. (See, *Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265.) Here, Respondents Argon and Gonzalez have failed to make such a showing. With respect to Respondent Ezeanioma, it was established that he made a mistake, was negligent and should have been more careful in the handling of his license affiliation.

21. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid*; see also *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) Here, Respondents Gonzalez and Argon has demonstrated poor judgment with respect to maintaining brokerage records, trust fund records and have failed in the fundamental duties of handling of real estate records and supervising employees. Respondents Gonzales and Argon presented no evidence in mitigation or rehabilitation.

Accordingly, allowing Respondents Gonzales and Argon to continue to engage in real estate activities would present a danger to the public. With respect to Respondent Ezeanioma, the preponderance of the evidence established that he made a mistake and failed to ensure that his license was properly re-affiliated with his employer upon its reinstatement from conditional suspension. While there is no evidence of consumer harm as a result of Respondent Ezeanioma's oversight and failure to properly affiliate his license, there is cause for concerns requiring a period of monitoring to ensure his strict compliance with all aspects of the real estate law. The public can be adequately protected by the revocation of Respondent Ezeanioma's real estate salesperson license and the issuance of a restricted real estate salesperson license to Respondent Ezeanioma.

22. Respondent Ezeanioma has modest financial means which make the payment of all costs of investigation and prosecution a hardship. There was no evidence of hardship or the inability of Respondents Gonzales and Argon to pay the BRE's reasonable costs. Based upon Respondent Ezeanioma's financial circumstances, and the severity of the order below, it is reasonable to order that he pay \$500 as his proportionate share of the costs upon issuance of a restricted license. The remaining \$2,845 shall be paid by Respondents Gonzalez and Argon.

ORDER

1. All licenses and licensing rights of Respondent Armando Gonzalez and Respondent Argon Enterprises, Inc. under the Real Estate Law are revoked.

2. Respondents Armando Gonzales and Argon Enterprises, Inc. shall pay the Bureau of Real Estate \$2,845 in costs within 60 days of the effective date of this order.

3. All licenses and licensing rights of Respondent Isaac Chijioke Ezeanioma 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 Bureau 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:

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

b. The restricted license issued to Respondent Ezeanioma 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.

c. Respondent Ezeanioma shall not be eligible to apply for 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.

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

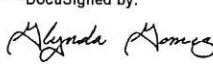
(1) That employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(2) 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.

e. Respondent Ezeanioma shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing 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 the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

g. Respondent Ezeanioma shall pay the Bureau of Real Estate's reasonable costs of investigation and enforcement in the amount of \$500 as a condition of issuance of the restricted license.

Dated: December 9, 2015

DocuSigned by:

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GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings