

FILED

MAR 23 2015

BUREAU OF REAL ESTATE

By

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

ROMEL AMBARCHYAN,

Respondent.

Cal BRE No. H-39215 LA

OAH No. 2014010960

DECISION

The Proposed Decision dated February 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 application for a real estate broker license is denied, but the right to a restricted real estate broker license is granted to Respondent. A petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon on APR 13 2015.

IT IS SO ORDERED

3/6/2015

REAL ESTATE COMMISSIONER

Wayne S. Bell

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the First Amended
Statement of Issues Against:

ROMEL AMBARCHYAN,

Respondent.

Case No. H-39215 LA

OAH No. 2014010960

PROPOSED DECISION

This matter was heard by Laurie R. Pearlman, Administrative Law Judge of the Office of Administrative Hearings, on January 9, 2015, in Los Angeles. Complainant Maria Suarez, Deputy Real Estate Commissioner, Bureau of Real Estate, State of California (Bureau), was represented by Diane Lee, Staff Counsel. Respondent Romel Ambarchyan was present and was represented by Frank M. Buda, Attorney at Law.

Oral and documentary evidence was received and the matter was submitted for decision on January 9, 2015.

FINDINGS OF FACT

1. On December 20, 2013, a Statement of Issues was made and filed by Complainant in her official capacity as Deputy Real Estate Commissioner of the Bureau. On November 18, 2014, the First Amended Statement of Issues was made and filed by Complainant.

2. In April 2013, Respondent filed an application with the Bureau for issuance of a real estate broker license, in which he revealed that the State Bar had taken disciplinary action had been taken against his law license on two occasions. The Bureau denied his application. Respondent filed a timely notice of defense and this matter ensued.

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3. From 2009 through 2011, Respondent was licensed by the Department of Real Estate¹ as a corporate designated officer/broker for MortgageQwest, Inc. No discipline was ever imposed against that license, which was canceled on April 1, 2011, and expired on July 12, 2013.

Disciplinary Actions Against Respondent's State Bar License

4. Two State Bar Court proceedings were brought against Respondent under the provisions of Section 10100, Division 4 of the Business and Professions Code, and pursuant to Government Code sections 11500 through 11528. Accordingly, due process protections were afforded to Respondent.

2012 State Bar Discipline

5a. On May 22, 2012, the Supreme Court of California, in case number S199672, pursuant to a stipulated settlement, suspended Respondent from the practice of law for one year, stayed execution of the suspension, placed Respondent on probation for two years, and imposed an actual suspension from the practice of law for the first 60 days of probation. Respondent was ordered to pass the Multi-State Professional Responsibility Examination, pay costs, and comply with the conditions of probation recommended by the State Bar Court in its Order Approving Stipulation, filed on December 9, 2011. The Supreme Court's order took effect on June 21, 2012. Respondent's law license was suspended from June 21, 2012, through August 20, 2012.

5b. The facts and circumstances of the 2012 State Bar Court discipline are that from December 2009 through November 2010, Respondent collected advance fees for loan modification services in ten client matters. He held himself out to be eligible to practice law in the states of Florida, New York, and Massachusetts in five of those client matters. These matters came to light after ten clients filed complaints against him with the State Bar of California. By his actions, Respondent violated five counts of the State Bar of California's Rule of Professional Conduct 1-300, subdivision (B) (practicing in a jurisdiction where he is not entitled to do so); five counts of the State Bar of California's Rule of Professional Conduct 4-200, subdivision (A) (entering into an agreement for, charging, and collecting illegal fees); five counts of Civil Code section 2944.7 (demanding, charging, and collecting advanced fees for loan modification services), and five counts of Business and Professions Code section 6106.3, subdivision (a) (charging and collecting compensation for services he had not yet fully performed in residential mortgage loan modification matters).

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¹ The Department of Real Estate subsequently became the Bureau of Real Estate.

5c. As mitigating factors, the State Bar Court noted that Respondent had no prior disciplinary record against his law license; had cooperated with the State Bar; had voluntarily ceased handling loan modifications; and had acted in good faith in the other states, in that he had arranged with local counsel to be available in the event that the cases proceeded to litigation. Respondent was given credit for his extensive pro-bono work. The State Bar Court acknowledged Respondent's good faith but mistaken belief that by having stand-by counsel available in states where he was not licensed to practice law it was permissible for him to practice law in those states. The State Bar Court noted that Respondent had cooperated with the State Bar; had reached a stipulated disposition before any disciplinary charges were filed; and by stipulating to facts, legal conclusions, and discipline, Respondent demonstrated recognition of his wrongdoing. The stipulation assisted the State Bar's prosecution by obviating the need for a trial on the merits as to culpability, and allowing the parties and the court to focus on the appropriate discipline.

2014 State Bar Discipline

6a. On June 9, 2014, the Supreme Court of California, in case number 5217564, pursuant to a stipulated settlement, suspended Respondent from the practice of law for one year, stayed execution of that suspension, placed Respondent on probation for two years, and imposed an actual suspension from the practice of law for the first 120 days of probation. Respondent was ordered to pay costs and to comply with the conditions of probation recommended by the State Bar Court in its Order Approving Stipulation, filed on February 12, 2014. The Supreme Court's order took effect on July 9, 2014. Respondent's license was suspended from July 9, 2014, through November 5, 2014.

6b. The facts and circumstances of the 2014 State Bar discipline are that Respondent had collected advance fees for home loan modification work and that he had held himself out as eligible to practice law in Washington and North Carolina, where he was not licensed. Respondent committed misconduct in five additional home mortgage loan modification cases between January 2010 and June 2011. This time period overlapped the period of misconduct in the prior discipline case. This second disciplinary action was brought because five additional client complaints were filed with the State Bar after the first disciplinary action had already gone forward. All of the misconduct in the second State Bar Court case occurred prior to the imposition of discipline in the first disciplinary matter. By his actions, Respondent violated two counts of the State Bar of California's Rule of Professional Conduct 1-300, subdivision (B) (practicing in a jurisdiction where he is not entitled to do so), two counts of the State Bar of California's Rule of Professional Conduct 4-200, subdivision (A) (entering into an agreement for, charging, and collecting illegal fees), three counts of Civil Code section 2944.7, subdivision (a)(1) (demanding, charging, and collecting advanced fees for loan modification services), and three counts of Business and Professions Code section 6106.3 (discipline of an attorney's license to practice law for violating Civil Code section 2944.6 or 2944.7).

6c. As mitigating factors, the State Bar Court noted that Respondent had provided evidence of his good character, cooperated with the State Bar's investigation, admitted his misconduct, and entered into a pre-trial stipulation fully resolving all matters prior to trial.

Respondent's Evidence

7. On October 11, 2009, California Senate Bill number 94 (SB 94) became effective. This legislation was enacted to curb abuses by those who exploited borrowers facing foreclosure unless they could obtain a home loan modification from their lender. Codified as Civil Code section 2944.7, it included a proscription against collecting fees from homeowners until all loan modification services had been completed.²

8. When Civil Code section 2944.7 was first enacted, some members of the legal community interpreted the statute as allowing attorneys to charge advance fees for providing legal advice to clients in loan modification cases. Under this reading, attorneys could charge clients for each loan modification service after it was performed by the attorney, even though the client's loan modification had not been finalized. Respondent testified that he had consulted with other attorneys, including a "compliance attorney" who confirmed this reading of the new statute. Respondent decided to perform loan modification services for clients and to collect for each service separately. He now acknowledges that he misinterpreted Civil Code section 2944.7. Respondent recognizes that he should have taken a more conservative approach by adhering to the plain language of Civil Code section 2944.7.

9. Respondent's misconduct occurred before the State Bar issued its decision, *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221. The *Taylor* decision clarified Civil Code section 2944.7 by determining that attorneys are precluded from collecting advance fees for home mortgage loan modification cases under that statute.

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² Civil Code section 2944.7, subdivision (a), states in pertinent part:

"Notwithstanding any other law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

10. Respondent accepts full responsibility for his actions. He acknowledges that he has made mistakes and expressed sincere remorse for his conduct. Respondent cooperated fully with the State Bar's investigation. He admitted that he handled loan modifications for clients in states where he was not licensed to practice law. He mistakenly believed that he was not required to be admitted to the bar in those states, since he was not handling any litigation in those client matters. On the out-of-state matters, Respondent affiliated with licensed attorneys in each state, in the event that any of his out-of-state loan modification cases proceeded to litigation. Following the filing of client complaints with the State Bar, Respondent refunded all fees he collected from his former clients, and cooperated with the State Bar in entering into stipulations to fully resolve both matters early in the cases, without trial. He no longer handles loan modifications, and devotes 15 percent of his law practice to providing pro bono legal services to distressed homeowners in breach of contract cases. In June 2014, Respondent successfully completed probation in his State Bar matter in case number S199672. He will remain on probation with the State Bar until July 2016 in case number 5217564. While Respondent has not completed payment of costs in the second matter, he has timely paid all costs billed to him. He is an active member of the California State Bar and is eligible to practice law in California.

11. Respondent is 33-years-old and married. His wife is a law student. Respondent obtained his bachelor's degree from University of California, Los Angeles and his law degree from Southwestern Law School. Respondent was admitted to practice law on December 1, 2006. He has worked in the real estate area since 2007. From 2007 through 2009, Respondent handled loan modifications as an associate at a law firm. He left to open his own law practice in 2009. From 2009 through 2011, he supervised the licensed activities of MortgageQwest, Inc., as the corporation's designated officer/broker. No discipline was ever imposed against that license, which expired on July 12, 2013. Currently, Respondent primarily handles real estate litigation. He has applied for an individual broker license, because he would like to represent clients in both litigation and purchase transactions, and to have the ability to list properties.

12. In July or August 2011, Respondent stopped taking on any new loan modification clients. Eighty to eighty-five percent of his clients were able to obtain loan modifications through Respondent's efforts. He screened his clients carefully, accepting only those cases which he deemed to have a high likelihood of success.

13. Anton Abramyan, Respondent's law partner, testified on his behalf. Abramyan has known Respondent since they were teenagers. He has practiced law with Respondent since his admission to the Bar in 2012, and is fully aware of the disciplinary actions taken against Respondent's law license and the denial of the application for a broker license. Abramyan describes Respondent as a very honest person, who is sincere and straightforward with his clients and his relationships. Respondent is very remorseful about the conduct which led to disciplinary action.

Respondent strongly believes that his career should “be about helping people” and he convinced Abramyan that 15 percent of their practice should consist of pro bono work.

14. Respondent submitted four character letters, which were admitted into evidence as administrative hearsay.³ One of the letters is from a dentist, who has been one of Respondent’s clients. Another letter is from a flight test engineer with the Department of Defense, who holds a high-level security clearance. Each one describes Respondent as an individual they hold in high regard because of his honesty, integrity, and strong moral character. They are aware of the disciplinary actions by the State Bar and of the denial of his application for a broker license, and feel confident that he should be licensed as a broker.

15. For the past five years, Respondent has donated money to the Society for Orphaned Armenian Relief (SOAR), a charitable organization dedicated to assisting orphaned youth in Armenia. He is also involved with the Armenian Bar Association, coordinating events and meetings.

16. Respondent demonstrated sincere regret for his actions and shows insight into how he would conduct himself in the future. He expressed a heartfelt desire to learn from his mistakes and to move beyond them.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 10177, the Bureau may deny an application for a real estate broker’s license if the applicant has:

(d) Willfully disregarded or violated the Real Estate Law.

[¶] . . . [¶]

(f) Had a license issued by another agency of this state revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license.⁴

³ The term “administrative hearsay” is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cal.App.4th 1001.)

⁴ The Bureau may consider disciplinary action taken by another agency only if that agency afforded Respondent due process protections comparable to those

(g) Demonstrated negligence or incompetence in performing an act for which he is required to hold a license, or

[¶] ... [¶]

(j) Engaged in any conduct which constitutes fraud or dishonest dealing.

2. Business and Professions Code section 10085.6, subdivision (a), provides that it is unlawful for any licensee, who offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee paid by the borrower, to receive any compensation until after the licensee has fully performed each and every service he represented he would perform.

3. Cause exists to deny Respondent's application for a real estate broker license pursuant to Business and Professions Code 10177, subdivisions (d), (f), (g), and (j), based upon the two disciplinary actions taken against Respondent's license to practice law, and the acts underlying the imposition of that discipline. (Factual Findings 4-6c). Respondent willfully violated the Real Estate Laws by collecting advance fees for home loan modification work. Such conduct constitutes fraud or dishonest dealing. By holding himself out as eligible to practice law in states where he was not licensed to practice, and by collecting advance fees for loan modifications, Respondent demonstrated negligence or incompetence in performing an act for which he is required to hold a license, resulting in suspension of his State Bar license. Collecting advance fees for loan modifications, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license.

4. The objective of a disciplinary proceeding is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in real estate professionals. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1030-1031.) The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.)

5. Rehabilitation is a state of mind and the law looks with favor upon one who has achieved reformation and regeneration with the reward of the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058; *Reisner v. State Bar* (1967) 67 Cal.2d 799, 811.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

provided by the Administrative Procedure Act, which includes Government Code sections 11500 through 11528. The State Bar Court provided the requisite due process, as set out in Factual Finding 4.

6. Respondent was sincere in accepting responsibility for his actions and has made important changes in his law practice. He has shown a change in attitude from that which existed at the time of the acts in question. More than three-and-a-half years have passed since Respondent's misconduct, which led to disciplinary action by the State Bar. In his dealings with the State Bar, he conducted himself in an exemplary manner. He resolved both matters by pre-trial stipulations, paid full restitution to his clients, and successfully completed his probation in the first disciplinary action against his law license. Respondent performs a significant amount of pro bono work and has demonstrated a financial commitment to helping orphans in Armenia. By allowing Respondent to continue to engage in the practice of law, the State Bar has demonstrated its confidence in his ability to conform to the ethical and procedural standards required of attorneys, despite his previous misconduct. His licensure as an attorney provides additional assurance that he will follow the statutes and regulations required of a real estate broker. Respondent has provided sufficient evidence of mitigation and rehabilitation to justify the issuance of a restricted real estate broker license.

ORDER

The application of Respondent Romel Ambarchyan for issuance of a real estate broker license is denied; provided, however, a restricted real estate broker license shall be issued to Respondent, pursuant to Business and Professions Code section 10156.5. The restricted license issued to Respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

3. Respondent shall report in writing to the Bureau of Real Estate as the Real Estate Commissioner shall direct by separate written order issued while the restricted license is in effect, such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

Dated: February 9, 2015

A handwritten signature in cursive script, reading "Laurie R. Pearlman", written in dark ink.

LAURIE R. PEARLMAN

Administrative Law Judge

Office of Administrative Hearings