

BEFORE THE BUREAU OF REAL ESTATE

MAY 13 2015

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

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By Daniel Bonner

In the Matter of the Accusation of
TIMOTHY S. HUYCK, individually and as
designated broker-officer of Rental Housing
Solutions and RENTAL HOUSING
SOLUTIONS, dba Mission Realty, a corporate
real estate broker,

CalBRE No. H-39345 LA

OA# No. 2014030961

Respondents.

DECISION

The Proposed Decision dated April 2, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

Case caption, paragraph No. 3, line 1, "...Broker License No. B0090011"
is amended to read "...Broker License No. 900111".

Case caption, paragraph No. 3, line 3, “...No. C0186616” is amended to read “...No. 1868616”.

Findings of Fact, page 2, paragraph No. 2, line 3, "...estate license number C0186616" is amended to read "...estate license number 1868616".

Findings of Fact, page 2, paragraph No. 2, line 7, "...designated officer expired on July 28, 2013.." is amended to read "...designated officer expired on July 27, 2013".

The Decision revokes any licenses or licensing rights of Respondent Rental Housing Solutions, a California corporation, and Rental Housing Solutions, dba Mission Realty, a corporate real estate broker.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent Timothy S. Huyck.

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 JUN 02 2015.

IT IS SO ORDERED

5/15/2015
REAL ESTATE COMMISSIONER


WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

TIMOTHY S. HUYCK, individually and
as designated broker-officer of Rental
Housing Solutions and RENTAL
HOUSING SOLUTIONS, dba Mission
Realty, a corporate real estate broker,

Real Estate Broker License No. B0090011⁹⁰⁰¹¹¹
Corporate Real Estate License
No. C0186616
1808016

Respondents.

Case No. H-39345 LA

OAH No. 2014030961

PROPOSED DECISION

This matter came on regularly for hearing before Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on March 3, 2015, at Los Angeles, California.

James R. Peel, Counsel for the Bureau of Real Estate (the Bureau),¹ represented complainant Veronica Kilpatrick, Deputy Real Estate Commissioner of the State of California (complainant).

Timothy S. Huyck, Attorney at Law, represented himself. Robert C. Schaffer, Director, Rental Housing Solutions, a California corporation, appeared on behalf of Rental Housing Solutions and Rental Housing Solutions, dba Mission Realty, a corporate real estate broker.

Oral and documentary evidence was received, the record closed and the matter submitted for decision at the conclusion of the hearing.

¹ Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate as part of the Department of Consumer Affairs.

FINDINGS OF FACT

1. The Bureau issued Huyck real estate broker license number B00900111 on July, 28, 2003, and it was last renewed on March 17, 2013. His license expires on March 16, 2017.

2. Rental Housing Solutions is a California Corporation, privately held with John Dahl, President, its sole shareholder. Rental Housing Solutions was issued a corporate real estate license number C0186616 on July 28, 2009 with main and branch offices in Riverside, California. Huyck was Rental Housing Solutions' designated broker-officer. He did not own stock in the corporation. The dba Mission Realty was added to Rental Housing Solutions on August 10, 2009. Rental Housing Solutions' corporate license with Huyck as its designated officer expired on July 28, 2013. On that day its main office address was discontinued and its dba Mission Realty and branch licenses were cancelled.² Rental Housing Solutions remains a privately held corporation with no broker-officer.

3. The complainant, in her official capacity, filed an accusation in the above-referenced matter arising from a singular real estate property involving the transmittal of monies to RHS's operating account, instead of a trust account, from a client's tenant. Respondent timely filed a request for hearing, and this action ensued.

Transaction

4. As broker of record, Huyck relied on Ryan Rude for all communications and transactions with the homeowners of the residential property in Fullerton (the Fullerton property). At the time of the real estate transaction, Rude had worked for RHS and Huyck for two years and during that time they developed a close personal and professional relationship. Rude had been a real estate salesperson but during this transaction reported to Huyck as an assistant. Rude's main work for Huyck was to assist him with small matters such as the Fullerton property where his principal responsibility was arranging loan modifications. Rude helped find tenants for rental properties and assisted Huyck and RHS with properties going into foreclosure. Huyck was Rude's supervisor and spoke with him during twice weekly personal meetings and phone conversations, five times a week. During that time, Huyck never observed Rude to do anything self-serving. ³In December 2013, Rude was convicted and sentenced to 26 years in prison for burglary, grand theft and other crimes involving dishonest acts related to real estate transactions resulting in millions of

² Rental Housing Solutions and Rental Housing Solutions, dba Mission Realty, shall collectively be referred to as RHS.

³ According to the Accusation, Rude's real estate salespersons license was revoked effective July 5, 2012 for violation of Business and Professions Code section 10177, subdivision (j) (dishonest dealing.) The Bureau failed to present evidence on this point.

dollars in losses to investors. Rude had not worked for RHS or Huyck during the time of the events which resulted in his conviction and Huyck did not find out about Rude's crimes until after Rude's trial.

5. In or around 2007, Rude developed a relationship with the owners of the Fullerton property when they retained him as a real estate salesperson to list it for sale. Based on the owner's experience with Rude as an "honest and sincere person," according to the male co-owner who testified at hearing, they contacted him in or around 2010 to explore loan modification and short-sale options on the Fullerton property. The owners of the Fullerton property were living in another house they owned and were in the process of securing a loan modification for that other house. To secure a loan modification they filled out a hardship affidavit which showed their expenses exceeded their income.

6. On November 22, 2010, the owners of the Fullerton property executed a lease listing agreement (the November 2010 listing agreement) through Rude, which was signed by Huyck as broker of record. The November 2010 listing agreement expired one year later, on November 21, 2011. The November 2010 listing agreement authorized a 50/50 split between the owners and Huyck, as broker. At the time of the November 2010 listing agreement the monthly rental market value of the Fullerton property was \$2000. Due to their financial situation, the owners of the Fullerton property were having problems paying their mortgage and started to miss their mortgage payments. Rude informed Huyck he spoke with the owners of the Fullerton property about the need for a tenant so that the property would not be vacant. Rude and Huyck agreed that vacant properties increased the risk of the home being padlocked by the mortgagor bank and would undermine any short-sale or loan modification. Huyck instructed Rude to secure a tenant for the Fullerton property. A month after they signed the November 2010 listing agreement the co-owners of the Fullerton property claimed that they never received the complete November 2010 agreement, and after unsuccessfully requesting a full copy from Huyck, notified him on December 31, 2010, that they would not be bound by the November 2010 listing agreement if they did not have the complete terms. In 2010 Huyck was not responsive to the owners' written requests for the complete November 2010 listing agreement, but at hearing Huyck produced the first pages of the November 2010 listing agreement which the co-owner testifying did not dispute.⁴

7. Rude spoke with Huyck about the difficulty finding tenants because they did not want to risk the uncertainty of a short sale or foreclosure. Sometime on or after the November 2010 listing agreement was executed, Rude also informed Huyck the owners of the Fullerton property did not wish to show income on their property as it would affect their ability to secure a loan modification. At hearing, the co-owner testified and confirmed that the owners understood the tenant secured would live rent-free. The co-owner admitted his former wife, the other owner, was more involved with the day-to-day concerns of the

⁴ The Accusation also claimed the owners were prevented from accessing their property on January 13, 2012. The Bureau did not press this issue at hearing and in any event there was no evidence that respondents knew about this, or that it was anything other than a private matter between Rude's sister and the owners.

Fullerton property but recalled that he discussed with Rude having a tenant so the property would not be vacant. He did not recall any conversation about not wanting to show income, but his income statement at the time prepared for a loan modification on another property is consistent with Huyck's recollection of his discussions with Rude about the possible negative effect of rental income on their loan modification.

8. Rude arranged to have his sister live in the Fullerton property. Huyck prepared documentation for Rude to deliver to his sister for signature. At hearing, Rude's sister was uncertain about what documentation she signed and what it meant, but as far as she was concerned her bi-monthly payments were the same as rent. Rude's sister was extremely confused and upset at hearing, and as she was not a real estate professional, her responses to questions requiring her to differentiate between rent and commissions, were disregarded. Rude's sister clearly recalled her brother telling her not to discuss her rent with anyone because it was below market for the area, that she could stay in the house for 3 to 6 months, and that she would possibly receive money as part of a "cash for keys" program where she turned over the keys as part of a foreclosure or short sale exchange. Rude's sister made her check payments to RHS and identified her payment as rent.

9. Consistent with Huyck's understanding of Rude's discussions with the owners of the Fullerton property about not wanting a paying tenant, Huyck contacted the California Association of Realtors (CAR) to find an appropriate form for a tenant representation agreement where the tenant agreed to pay a commission to the broker and RHS to secure tenancy in a house pending a short sale or foreclosure. Based on advice from the CAR Huyck modified the buyer representation agreement and provided it to Rude for his sister's signature. The buyer representation agreement named Rude's sister as the buyer and RHS as the broker and set forth as commissions bi-weekly payments from Rude's sister to RHS of \$250, the first and fifteenth of the month. On February 4, 2011, Rude's sister and Huyck signed the agreement.

10. Huyck prepared an additional agreement entitled residential lease or month-to-month rental agreement for Rude to deliver to his sister and the owners of the Fullerton Property for their signature. The agreement was between the co-owner of the Fullerton Property and Rude's sister, the tenant. The agreement provided the beginning date of the tenancy, February 4, 2011, the personal property included, refrigerator, washer and dryer, and the same payment amount, payment schedule payee, RHS, as the buyer representation agreement in Factual Finding 9.

11. At hearing, Huyck explained the residential lease or month-to-month rental agreement was prepared as an accommodation to Rude's sister so she would have an address to establish her residency to enroll her children in the local school district. Unlike the tenant representation agreement, the residential lease agreement included the address of the Fullerton Property. Huyck did not consider the residential lease agreement the controlling agreement and was comfortable receiving payment as a commission based upon Rude's representation of his discussions with the owners of the Fullerton property. He trusted Rude and did not think it was inconsistent with the owner's signed lease agreement in Factual

Finding 6 which required a 50/50 split because that agreement assumed a market rate of about \$2000, or a broker share of \$1000, double the amount of the \$500 RHS received under its agreement with Rude's sister. The tenant representation agreement and the residential lease agreement Rude's sister signed also contained the same payment amounts and schedule so there was no intention to hide the terms from the owner. Based upon Huyck's representations and Rude's sister's execution of the buyer representation agreement, Huyck insisted that he was justified in placing the funds in the RHS overhead account as opposed to the client trust account. Huyck's position about the primacy of the tenant representation agreement over the lease agreement reflected conduct that was not fraudulent, but careless.

12. Rude's sister signed the agreement but Rude never presented the agreement to the owners of the Fullerton property. Instead, Rude forged the initials and signature of Huyck in the place secured for the landlord's signature, and the signature of Huyck in the place designated for the real estate broker. Huyck did not see the forged documents until he prepared for hearing.

13. Rude's sister made payments to RHS beginning on February 4, 2011 which were deposited in RHS's overhead account, not its trust account. By late August she was having trouble making payments and sent in reduced payments or made no payments. According to RHS's records, her last payment was on November 1, 2011, and her total payments to them were \$3,950. Rude's sister maintains that she paid a total of \$4,700, but given her confusion at hearing, and lack of documentation, her figures were uncertain.

14. The parties do not dispute the owners of the Fullerton property assumed Rude's sister was "house sitting" and living for free until the end of her tenancy. In their August 21, 2011 letter to Rude's sister, the owners of the Fullerton property informed Rude's sister of a possible short sale and thanked her for "house sitting." (Exhibit 7.) In or around January 2012, Rude's sister spoke directly with the female co-owner of the Fullerton property who needed to make arrangements for her to move because the bank mortgagor initiated foreclosure proceedings. During their conversation, the owners of the Fullerton property were informed for the first time that she was paying RHS to live in their home. The female co-owner confirmed the offer was for her to stay in the house "[a]bsolutely free" as a "house sitter and not a renter." (Exhibit 8.) More disturbing to them was Rude's sister's understanding from her brother that she could stay in the house as long as she wanted "in order to get the bank to pay [her] to leave." (*Ibid.*) Rude's sister was stunned that she was supposed to live for free and when she confronted her brother he told her not to speak with them, that she was making trouble for him and RHS. At the advice of her brother, Rude's sister demanded Huyck refund her payments, which he refused.

15. Respondent Huyck provided credible and convincing testimony of his long-term and unblemished history as a broker and active, positive and compassionate commitment to his family and community. Huyck had no previous history of discipline. Huyck supplied 18 detailed letters from attorneys, real estate brokers, investors, and church colleagues, who supplied direct and substantive knowledge of his professional and personal conduct, and attested to his honesty, kindness and knowledge. These letters corroborated

Huyck's testimony about his history, participation in charitable works and devotion to his family of seven children and 11 grandchildren, his church and his community. Respondent Huyck continued to pursue his education. He obtained a law degree and in 2014 became a member of the California Bar. Respondent Huyck's demeanor and testimony, when viewed in the context of his history do not support a conclusion that his conduct was intentional or fraudulent. On the contrary, based upon his demeanor and testimony, and corroborating references, Huyck's reliance on trust and oral representations was misplaced in this one instance. As such, the public would be adequately protected with a probationary license, given Huyck's long history of respect and adherence to the obligations of a licensed real estate broker.

16. The Bureau incurred costs, including attorney fees, in the total sum of \$2,022.40 in connection with the investigation and prosecution of this action. Those costs are deemed just and reasonable.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend the real estate license of respondent Huyck pursuant to Business and Professions Code section 10177, subdivision (g) (negligence or incompetence in performing an act).⁵ Cause exists to revoke or suspend the real estate license of respondent Huyck and RHS pursuant to Business and Professions Code section 10176, subdivision (d) (commingling trust funds) and California Code of Regulations (Regulations), title 10, section 2831 (trust fund records) and section 2832 (trust fund account handling).

2. Huyck on behalf of RHS as its broker-officer, received rental monies which should have been placed in a trust account and not RHS's overhead account. Huyck's reliance on Rude's oral representations instead of written documentation confirming the authorization of the owners of the Fullerton property was misplaced and negligent. The November 2010 listing agreement, which Huyck signed and knew about expressly provided for a 50/50 lease arrangement. Notwithstanding Rude's oral representations there was no evidence of Huyck's due diligence in securing documentation executed by the owners of the Fullerton property confirming their authorization for the commission and overriding the November 2010 listing agreement. The buyer agreement with Rude's sister might have established her authorization to pay a commission to secure her tenancy, but RHS was not the owner of the property and there was no written confirmation from the owners of the Fullerton property waiving their right to rent or confirming their consent to the commission. Huyck's trust in Rude, however justified, did not substitute for his oversight as the licensed real estate broker and broker-officer for RHS. Regardless of the number of times they met or spoke each week, there was no evidence that Huyck insisted Rude supply the executed written documentation Rude said he provided to Rude's sister or the owners of the Fullerton

⁵ Business and Professions Code section 10177 does not apply to RHS as Huyck does not control ten percent or more of RHS based on Factual Finding 2.

property. In view of the preexisting November 2010 listing agreement which established the initial intent of the Fullerton property owners to collect rents, without the owner's written authorization to waive rent in favor of a commission, Huyck should have placed the payments from Rude's sister in the client trust account. (Factual Findings 2, 4-14.)

3. Cause exists to revoke or suspend the real estate licenses and licensing rights of Huyck and RHS for failing to obtain prior written authorization from the owner before securing the tenant's signature on a leasing agreement pursuant to Business and Professions Code section 10176, subdivision (j) which requires written authorization of the owner of the property for sale, lease, exchange, or rent. As set forth in Factual Findings 4-14 and Legal Conclusion 2 above, although Rude's actions were fraudulent, and Huyck met with him and spoke with him constantly, Huyck's reliance on Rude's oral representations was inconsistent with his supervisory obligations as a broker-officer under Business and Professions Code section 10159.2. At a minimum, Huyck was required to check the written documents Rude was directed to provide to the owners of the Fullerton property for their signature. Although based on Factual Findings 11-12, Huyck did not consider that document controlling, it ensured the owners were notified of payments being made to RHS for Rude sister's tenancy and would have provided them the opportunity to object or waive their right to rents. Notwithstanding Huyck's reliance on CAR, his use of the form buyer representation agreement executed by Rude's sister was misplaced without written authorization from the owners of the Fullerton property especially in view of the November 2010 agreement which memorialized the owner's intent to share the proceeds of any rents 50/50.

4. Cause does not exist to revoke or suspend the real estate licenses and licensing rights of respondents Huyck and RHS for claiming a fee, compensation or commission under the November 2010 listing agreement that did not contain a specific date of termination. Contrary to the Bureau's allegation the November 2010 listing agreement included a date of termination. (Factual Finding 6.)

5. Cause does not exist to revoke or suspend the real estate licenses and licensing rights of respondents Huyck and RHS pursuant to Business and Professions Code sections 10176, subdivision (a) (substantial misrepresentation by willfully disregarding or violating the Real Estate Law), 10176, subdivision (e) and 10176, subdivision (i) (dishonest dealing and fraud). Similarly, cause does not exist to revoke or suspend the real estate license and licensing rights of respondent Huyck pursuant to Business and Professions Code section 10177, subdivision (d) (willfully disregarding or violating the Real Estate Law). Neither Huyck nor RHS had a reason to believe that Rude misrepresented his communication with his sister and the owners of the Fullerton property, or had failed to fully disclose his sister's payment arrangement to Rude. Given the overwhelming evidence of Rude's pattern of fraudulent behavior, and substantial evidence of Huyck's regular communications with Rude, respondents were not implicated in Rude's substantial misrepresentations or dishonest dealing and fraud. Further, the evidence established that Huyck had an honest, if misplaced, reliance on the advice of CAR and the CAR form. The sums collected were minor and well documented, but misplaced in RHS's overhead account instead of the client trust account. Huyck and RHS's conduct was at most negligent based on Factual Findings 4-15.

6. Cause exists to revoke or suspend the real estate broker license of respondent Huyck for failing to exercise reasonable supervision as the broker-officer over the activities of RHS, consistent with Business and Professions Code section 10159.2, to ensure compliance with the real estate law pursuant to Business and Professions Code section 10177, subdivision (h). Although Huyck and RHS were not responsible for conduct which is fraudulent and deceptive, Huyck was responsible for preparing appropriate documentation and reviewing the documentation after it was provided to Rude to make sure it was signed. The conduct described in Legal Conclusions above and Factual Findings 4-14 was negligent, not fraudulent.

7. The Bureau is charged with protecting the public against both negligent or incompetent licensees (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518) and dishonest licensees (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176). Respondent Huyck offered substantial evidence of rehabilitation in Factual Finding 15. Given his unblemished record as a real estate broker, and his outstanding referrals Huyck established that, moderate discipline against Huyck's licensing rights is warranted. It was not established that he intended to facilitate Rude's misconduct or had knowledge that Rude was in the process of committing fraud. On the contrary, respondent Huyck's failing was his lack supervision of Rude, his failure to prepare appropriate documentation and to ensure that the documentation was signed as directed. Respondent had no other record of discipline with the Bureau, and no evidence was offered suggesting that he has not acted properly otherwise in the exercise of his broker license. His financial responsibility for paying monetary penalties and costs in Legal Conclusion 9, and a limited period of a restricted broker's license are satisfactory measures based on his acts and omissions.

8. Respondents Rental Housing Solutions is currently a California corporation that does not operate as a corporate real estate broker, Rental Housing Solutions, dba Mission Realty, but retains rights of renewal of its corporate real estate broker license in Factual Finding 2 pursuant to Business and Professions Code section 10201. As it was acting at all times through its officer-broker Huyck who was not a shareholder, the public will be adequately protected by revoking its license and allowing the Bureau through its usual processes an opportunity to consider its qualifications for licensure when and if it applies for licensure again. RHS's responsibility for paying monetary penalties and costs in Legal Conclusion 9 is an additional measure based on its acts and omissions.

Costs: The reasonable costs of the investigation and enforcement of the case.

9. Business and Professions Code section 10106 provides, in pertinent part, in any order issued in resolution of a disciplinary proceeding before the Bureau, the administrative law judge may direct a licensee found to have committed a violation of the Real Estate Law to pay the reasonable costs of the investigation and enforcement of the case. In this case, it was established that Respondents violated the Real Estate Law and that the

Bureau incurred reasonable costs in the investigation and prosecution of this matter in the amount of \$2,022.40. Respondents are jointly and severally liable for these costs. (Factual Finding 16.)

ORDER

1. Any licenses or licensing rights of respondent Rental Housing Solutions, a California corporation, and Rental Housing Solutions, dba Mission Realty, a corporate real estate broker, are revoked.

2. All licenses and licensing rights of respondent Timothy S. Huyck under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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 Huyck 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 Huyck may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent Huyck'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 Huyck 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 Huyck shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the effective date of this Decision.

D. Respondent Huyck 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 education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If

respondent Huyck fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent Huyck presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

3. Within 30 days of the effective date of this Decision, respondent Huyck and RHS shall pay costs in the amount of \$2,022.40 to the Bureau of Real Estate. Respondents are jointly and severally liable for these costs.

DATED: April 2, 2015

A handwritten signature in black ink, appearing to read "Eileen M. Cohn", written over a horizontal line.

EILEEN COHN

Administrative Law Judge

Office of Administrative Hearings