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FILED

APR 13 2016

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
REDLANDS REALTY, INC., doing business as)	
Redlands Mortgage,)	
)	
<u>JEFFREY THOMAS NOVAK</u> , individually and)	BRE No. H-39365 LA
as designated officer of Redlands Realty, Inc., and)	OAH No. 2014120828
)	
RAMONA KAY NOVA,)	
)	
Respondents.)	
)	

DECISION AFTER REJECTION

This matter came on for hearing before Matthew Goldsby, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on October 13 and 14, 2015.

Cheryl D. Keily, Counsel, represented Maria Suarez, Deputy Real Estate Commissioner of the State of California (Complainant).

JEFFREY THOMAS NOVAK (Respondent) was present at hearing and represented himself.

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1 Default orders were filed against REDLANDS REALTY, INC. and RAMONA
2 KAY NOVAK prior to the hearing. Therefore, this decision only addresses JEFFREY
3 THOMAS NOVAK.

4 Oral and documentary evidence was received and the matter was submitted for
5 decision on October 14, 2015.

6 On October 29, 2015, the Administrative Law Judge rendered a Proposed
7 Decision, which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the
8 Government Code of the State of California, Respondent was served with notice of my
9 determination not to adopt the Proposed Decision of the Administrative Law Judge along with a
10 copy of said Proposed Decision. Respondent was notified that I would decide the case upon the
11 record, the transcript of proceedings held on October 13 and 14, 2015, and upon any written
12 argument offered by Respondent and Complainant.

13 I have given careful consideration to the record in this case including the
14 transcript of the proceedings of October 13 and 14, 2015.

15 The Factual Findings and Legal Conclusions in the Proposed Decision dated
16 October 29, 2015, of the Administrative Law Judge of the Office of Administrative Hearings are
17 hereby adopted.

18 The Order shall be as follows:

19 ORDER

20 All licenses and license rights of Respondent JEFFREY THOMAS NOVAK
21 under the Real Estate Law are revoked; provided however, a restricted real estate salesperson
22 license shall be issued to JEFFREY THOMAS NOVAK pursuant to Section 10156.5 of the
23 Business and Professions Code if Respondent makes application therefor and pays to Bureau of
24 Real Estate the appropriate fee for the restricted license within 90 days from the effective date of
25 this Decision. The restricted license issued to Respondent shall be subject to all of the
26 provisions of Section 10156.7 of the Business and Professions Code and to the following
27 limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

- 1 1. The restricted license issued to Respondent may be suspended prior to hearing by Order
2 of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo
3 contendere to a crime which is substantially related to Respondent's fitness or capacity
4 as a real estate licensee.
- 5 2. The restricted license issued to Respondent may be suspended prior to hearing by Order
6 of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
7 Respondent has violated provisions of the California Real Estate Law, the Subdivided
8 Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the
9 restricted license.
- 10 3. Respondent shall not be eligible to petition for the issuance of any unrestricted real estate
11 license nor for removal of any of the conditions, limitations or restrictions of a restricted
12 license until two (2) years have elapsed from the effective date of this Decision and
13 Order. Respondent shall not be eligible to apply for any unrestricted licenses until all
14 restrictions attaching to the license have been removed.
- 15 4. Respondent shall submit with any application for license under an employing broker, or
16 any application for transfer to a new employing broker, a statement signed by the
17 prospective employing real estate broker on a form approved by the Bureau which shall
18 certify:
- 19 (a) That the employing broker has read the Decision and Order of the
20 Commissioner which granted the right to a restricted license; and
- 21 (b) That the employing broker will exercise close supervision over the
22 performance by the restricted licensee relating to activities for which a real
23 estate license is required.
- 24 5. Respondent shall, within nine (9) months from the effective date of this Decision and
25 Order, present evidence satisfactory to the Commissioner that Respondent has, since the
26 most recent issuance of an original or renewal real estate license, taken and successfully
27 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real

1 Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
2 condition, Respondent's real estate license shall automatically be suspended until
3 Respondent presents evidence satisfactory to the Commissioner of having taken and
4 successfully completed the continuing education requirements. Proof of completion of
5 the continuing education courses must be delivered to the Bureau of Real Estate, Flag
6 Section at P.O. Box 137013, Sacramento, CA 95813-7013.

7 6. All licenses and licensing rights of Respondent are indefinitely suspended unless or until
8 Respondent pays the sum of \$ 12,504.21 for the Commissioner's reasonable cost of the
9 investigation and enforcement which led to this disciplinary action. Said payment shall
10 be in the form of a cashier's check made payable to the Bureau of Real Estate. The
11 investigative and enforcement costs must be delivered to the Bureau of Real Estate, Flag
12 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of
13 this Decision and Order.

14 7. All licenses and licensing rights of Respondent are indefinitely suspended unless or until
15 Respondent provides proof satisfactory to the Commissioner, of having paid the amount
16 of \$280,339.53 as restitution to the victims. Proof of satisfaction of this requirement
17 includes: a certified copy of the satisfaction of judgment; a letter from an attorney or
18 certified public accountant testifying under penalty of perjury to the fact that said
19 judgment has been paid by Respondent; a copy of a cancelled check to the victim(s);
20 and/or a letter from the victim(s) attesting that repayment of funds has been received.
21 Proof of payment must be delivered to the Bureau of Real Estate, Flag Section at P.O.
22 Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the
23 effective date of this Decision and Order.

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This Decision shall become effective at 12 o'clock noon on
MAY 03, 2016.

IT IS SO ORDERED April 11, 2016.

Real Estate Commissioner



Wayne S. Bell

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FILED

DEC 08 2015

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-39365 LA
)	
JEFFREY THOMAS NOVAK,)	OAH No. 2014120828
)	
Respondent.)	

NOTICE

TO: JEFFREY THOMAS NOVAK, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated October 29, 2015, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated October 29, 2015, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on October 13 and 14, 2015, and any written argument hereafter submitted on behalf of respondent and complainant.

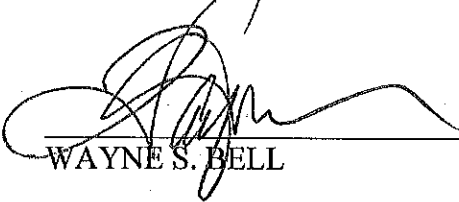
Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of October 13 and 14, 2015, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good

1 cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real
4 Estate unless an extension of the time is granted for good cause shown.

5 DATED: 12/5/2015.

6 REAL ESTATE COMMISSIONER

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10 WAYNE S. BELL

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BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

FILED

DEC 08 2015

BUREAU OF REAL ESTATE

By 

In the Matter of the Amended Accusation of:

REDLANDS REALTY, INC., doing
business as Redlands Mortgage,

JEFFREY THOMAS NOVAK, individually
and as designated officer of Redlands Realty,
Inc., and

RAMONA KAY NOVAK,

Respondents.

Case No. H-39365 LA

OAH No. 2014120828

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on October 13 and 14, 2015, at Los Angeles, California.

Cheryl D. Keily, Counsel with the Bureau of Real Estate (Bureau), appeared and represented complainant Maria Suarez, a Deputy Real Estate Commissioner of the State of California.

Respondent Jeffrey Thomas Novak (Jeffrey Novak) appeared and represented himself individually and as the designated officer of Redlands Realty, Inc., doing business as Redlands Mortgage (Redlands Realty).

Ramona Kay Novak (Kay Novak) did not appear and was not served with notice of hearing because she failed to file a timely Notice of Defense and waived her right to a hearing.

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity. Jeffrey Novak timely submitted a Notice of Defense on his own behalf, but not on behalf of Redlands

Realty. Kay Novak failed to file a notice of defense. The failure to file a notice of defense constitutes a waiver of the right to a hearing. (Gov. Code, § 11506.) The hearing proceeded against Jeffrey Novak only.

2. The Bureau issued salesperson license number B/00870228 to Jeffrey Novak on August 3, 1984. A broker license was issued to him on February 20, 1998. The license is valid and will expire on February 25, 2018, unless renewed.

3. Jeffrey Novak and Kay Novak were married for more than 25 years. When they met, they were both licensed by the Bureau.

4. On March 24, 1993, Kay Novak entered a plea of nolo contendere and was convicted of forgery, in violation of Penal Code section 476, subdivision (a), a felony. She was sentenced to serve time in jail, eventually on weekends only. The conviction arose after Kay Novak engaged in "check kiting" involving two real estate clients, causing approximately \$60,000 in damages.¹

5. On March 31, 1994, the Bureau filed an Accusation against Kay Novak in case number H-1757-SA, based on her felony conviction. On August 15, 1994, the Bureau revoked Kay Novak's salesperson license.

6. On August 6, 1998, Jeffrey Novak filed Articles of Incorporation with the California Secretary of State, establishing Redlands Realty as a California corporation. Jeffrey Novak was appointed to serve as the chief executive officer and co-director of the corporation. Kay Novak was appointed to serve as the chief financial officer and co-director of the corporation. The corporation engaged in the business of mortgage and real estate. The Bureau issued corporation license number C/01244896 to Redlands Realty on October 23, 1998, with Jeffrey Novak as the designated officer.

7. On November 25, 2002, Kay Novak filed a petition to reinstate her real estate salesperson license. On March 9, 2004, the Bureau denied the petition, but granted Kay Novak the right to apply for a restricted real estate salesperson license. On July 24, 2004, the Bureau issued a restricted salesperson license to Kay Novak. On September 5, 2006, Kay Novak filed a second petition to reinstate her license. On September 19, 2007, the Bureau granted the petition and issued an unrestricted salesperson license to Kay Novak.

8. On February 28, 2012, the Bureau received a consumer complaint against Redlands Realty (David K. Complaint). The David K. Complaint pertained to a mortgage loan transaction dated October 28, 2011 and was based on the following facts and circumstances:

¹ The term "check kiting" is a common reference to a fraudulent scheme in which checks are issued against funds that a bank has credited to an account before the deposited check has cleared.

(A) At the direction of Kay Novak, David K. delivered a cashier's check payable to Redlands Realty in the amount of \$124,200, representing the consumer's 20 percent down payment towards the purchase of real property.

(B) After numerous delays, Kay Novak informed David K. that "there was a problem, [that the] initial 20% down payment was 'stuck in title'. . . [and that] the only way the house would close on time . . . would be to transfer another 20% down payment of [\$124,200] directly to escrow." (Ex. 8, p. 5.)

(C) David K. made the second payment in the amount of \$124,200 directly to escrow and the transaction closed. However, after repeated requests, Redlands Realty did not refund the original down payment made payable to it.

(D) On January 23, 2012, David K., Jeffrey Novak, and Kay Novak executed a Confidential Hold Harmless Agreement and Mutual Release. Redlands Realty refunded David K. the amount of \$124,200 on March 15, 2012.

9. The Bureau assigned Chona T. Soriano (the Auditor) to investigate the David K. Complaint. On May 2, 2012, the Auditor spoke with Jeffrey Novak and scheduled a meeting on May 21, 2012, to examine Redland Realty's compliance with the Real Estate Law.² In her letter dated May 2, 2012, the Auditor requested the following documents for the audit period, including "bank statements for *all* trust accounts and general accounts used in connection with your real estate, loans, escrow and property management activities." (Ex. 16, emphasis in original.)

10. The Auditor examined the books and records of Redlands Realty for the audit period beginning January 1, 2011, and ending May 31, 2012. In her report dated July 31, 2012, the Auditor determined that Redlands Realty had two business checking accounts for its general operations, one at Bank of America and the other at Chase Bank. Statements for the Bank of America account were provided to the auditor, but statements for the Chase Bank account were not produced for examination. The Auditor concluded that the corporation did not maintain a trust account for its mortgage loan activities and violated the Real Estate Law as follows:

(A) On October 28, 2011, the sum of \$124,200 was deposited into the corporation's Bank of America account. The funds did not belong to Redlands Realty and constituted client trust funds;

(B) On November 7, 2011, the balance in the Bank of America account was less than \$124,200 and remained less than \$124,200 for 49 days;

(C) On December 16, 2011, the sum of \$124,200 was withdrawn from the Bank of America account.

² The Real Estate Law is set forth at Business and Professions Code sections 10000 to 11506.

(D) On December 19, 2011, the sum of \$124,200 was deposited into the corporation's Chase Bank account and remained in the account until the amount was distributed to David K. as described in Factual Finding 8(D).

11. On July 2, 2012, the Bureau received another consumer complaint against Redlands Realty (Lisa T. Complaint). The Lisa T. Complaint pertained to mortgage loan transactions dated August 29, 2011, and March 12, 2012, and was based on the following facts and circumstances:

(A) Lisa T. was a neighbor of the Novaks, residing in a single family residence owned by her brother. In August 2011, her brother retained Jeffrey Novak to market the property for sale. Lisa T. contracted with Kay Novak to help her and her husband purchase the property from her brother.

(B) On August 29, 2011, at the direction of Kay Novak, Lisa T. issued a check in the amount of \$50,000 payable to Redlands Realty towards the purchase of the property. Subsequently, Kay Novak advised Lisa T. to make a cash offer in the amount of \$180,000. Accordingly, Lisa T. issued a second check payable to Redlands Realty in the amount of \$130,000.

(C) Kay Novak then informed Lisa T. that Jeffrey Novak "saw [the check] and was screaming. He told [Kay Novak] to give the money back." (Ex. 9, p. 8.) Kay Novak told Lisa T. that Jeffrey Novak was upset because the check was endorsed to the wrong account. Kay Novak met with Lisa T. and handed her the check. Kay Novak then called Jeffrey Novak on a cell phone, gave Lisa T. the telephone, and instructed her to tell him that she had the check in hand. After Kay Novak terminated the call, she took the check back and told Lisa T. that she would deposit it into the correct account.

(D) On June 4, 2012, Lisa T. sent Redlands Realty a notice to cancel the transaction and demand a refund in the amount of \$180,000.

(E) On June 14, 2012, Kay Novak issued two Chase Bank business checks totaling \$180,000 payable to Lisa T. A branch manager at Chase Bank informed Lisa T. that the checks would not be honored because the account had insufficient funds.

(F) On June 20, 2012, Lisa T. sent a letter to Kay Novak, notifying her that the checks issued were "denied by Chase" and demanding repayment within 30 days. (Ex. 9, p. 22.) Lisa T. retained an attorney and filed a civil action against respondents. A default judgment was entered in the principal amount of \$191,524, plus prejudgment interest in the amount of \$24,306 and costs in the amount of \$1,210.

(G) Kay Novak agreed to pay Lisa T. \$250 per month from her wages. Jeffrey Novak agreed to pay one half of his net real estate commissions. As of August 13, 2015, they have jointly paid \$9,160.47 to Lisa T. in restitution.

12. On October 26, 2012, the Bureau received a consumer complaint against Redlands Realty (Carla C. Complaint). The Carla C. Complaint pertained to a mortgage loan transaction dated December 3, 2010, and was based on the following facts and circumstances:

(A) In December 2010, Carla C. was in arrears on a purchase money loan with an outstanding balance of \$350,000. The value of the property was \$250,000. The consumer's husband died in an accident and had designated her as the beneficiary of a life insurance policy. She intended to use the insurance proceeds to refinance the loan.

(B) When Carla C. completed a loan application, Kay Novak directed her to issue a check payable to Redlands Realty in the amount of \$110,000. She then directed Carla C. to stop making payments on the loan.

(C) By March 2012, Carla C. was still waiting for closure of her transaction. She consulted another loan broker who inquired with Kay Novak about the status of her application. Kay Novak persuaded Carla C. not to engage the other loan broker and directed her to complete a new loan application. Kay Novak again instructed Carla C. not to make monthly payments on the outstanding loan.

(D) By October 8, 2012, the transaction remained incomplete. Because she was unable to refinance the loan on her home, Carla C. sold the property in a "short sale," meaning the amount realized on the sale was insufficient to pay the lender in full and no net proceeds were payable to Carla C.

(E) Carla C. asked Kay Novak for the return of her \$110,000. Despite repeated demands by Carla C., Redlands Realty did not refund her money. Kay Novak has made no payments to Carla C. to refund her money. To date, Jeffrey Novak has paid Carla C. approximately \$500.

13. Including the amounts repaid by the date of the hearing, the consumers who filed complaints sustained damages in the amount of \$280,339.53.

14. Jeffrey Novak testified that he did not supervise Kay Novak's business activities because she was his wife and he trusted her.

15. On December 3, 2012, the California Secretary of State suspended the corporate status of Redlands Realty.

16. In March 2013, Jeffrey Novak terminated all employees of Redlands Realty, including Kay Novak. He separated from Kay Novak and filed a petition for the dissolution of their marriage. Jeffrey Novak currently rents an apartment and works as a salesman for Keller Williams. He does not intend to work as a broker or supervise the work of other salespersons.

17. Criminal proceedings are now pending against Kay Novak. No criminal charges were filed against Jeffrey Novak. There is no evidence to show that Jeffrey Novak has any criminal record. He has no record of prior disciplinary action by the Bureau.

18. The following witnesses testified about Jeffrey Novak's character:

(A) Theresa Carter has known Jeffrey Novak for one year in her capacity as team leader CEO at Keller Williams Realty, his current employer. She has observed Jeffrey Novak in his professional practice and considers his standard of conduct to be high. Keller Williams Realty prohibits their salespersons from collecting down payments outside escrow. Keller Williams Realty will continue to supervise Jeffrey Novak's sales transactions.

(B) Paul D'Arca has known Jeffrey Novak for 12 years and socialized with both Jeffrey Novak and Kay Novak. They took vacations together. He considers Jeffrey Novak to be honest. The witness engaged Jeffrey Novak in two real estate transactions and had no complaints.

(C) Jacob Novak is the son of Jeffrey Novak. The witness considered his father to be a good father who was supportive and generous with him, even during his period of financial difficulty.

19. The following witnesses wrote character reference letters about Jeffrey Novak:

(A) Julie D'Arca has known Jeffrey Novak for 12 years, during which time she has engaged his professional services. She attributes "the financial transactions of Redlands Realty [to] his soon to be ex-wife" and "truly believes that he would never knowingly engage in conduct that would defraud a customer or break the law." (Ex. A.) She stated that he "continues to persevere and donate his time through community service and is always helping others." (*Ibid.*)

(B) Christopher Harrison has known Jeffrey Novak since 1987 and states that he has been "witness to unwavering integrity." (Ex. A.)

20. Complainant incurred prosecution costs in the amount of \$3,493.25, investigation costs in the amount of \$4,186, and audit costs in the amount of \$4,824.96. These costs totaling \$12,504.21 were supported by a declaration and are reasonable considering the complexity of the case.

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LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. The Bureau may discipline the license of a real estate licensee who willfully disregarded or violated the law or any related rules or regulations. (Bus. & Prof. Code, § 10177, subd. (d).)

3. The Bureau may discipline the license of a real estate licensee who has demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license. (Bus. & Prof. Code, § 10177, subd. (g).)

4. The Bureau may discipline the license of a broker licensee who failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. (Bus. & Prof. Code, § 10177, subd. (h), Cal. Code Regs., tit. 10, § 2725.)

5. A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds. (Bus. & Prof. Code, § 10145, subd. (a).)

6. A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. (Bus. & Prof. Code, § 10148, subd. (a).)

7. The Bureau may suspend or revoke a real estate license where the licensee, in performing or attempting to perform any of the acts of a real estate licensee has been guilty of any conduct which constitutes fraud or dishonest dealing. (Bus. & Prof. Code, § 10176, subd. (i).)

8. The officer designated by a corporate broker licensee 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. (Bus. & Prof. Code, § 10159.2, subd. (a).)

9. A licensed corporation shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State. (Cal. Code Regs., tit. 10, § 2742, subd. (c).)

10. In this case, Kay Novak accepted funds that belonged to others and failed to deposit the funds into a neutral escrow depository or trust fund account. As a broker, Jeffrey Novak failed to exercise reasonable supervision over the activities of Kay Novak as his salesperson. As the designated officer of Redlands Realty, Jeffrey Novak failed to exercise reasonable supervision over Kay Novak's activities conducted on behalf of the corporation. Jeffrey Novak demonstrated negligence and incompetence by trusting his wife to engage in unsupervised real estate transactions with knowledge of her prior felony conviction for forgery. Because Jeffrey Novak trusted his wife to operate his business as an employed salesperson, Jeffrey Novak is responsible for her misconduct in the exercise of his license and for all her acts done in the course of his business. (*Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179.) Jeffrey Novak violated the regulations by failing to maintain Redlands Realty in good standing with the California Secretary of State. (Factual Finding 15.)

11. Accordingly, cause exists to discipline Jeffrey Novak's license under Business and Professions Code sections 10145, 10148, 10159.2, 10176, subdivision (i), and 10177, subdivisions (d), (g), (h), and (j). (Factual Findings 1-15.)

12. Respondent has presented evidence of mitigation and rehabilitation. (Cal. Code Regs., tit. 10, § 2912.) He has been licensed by the Bureau for over 30 years without any prior record of discipline. He is currently working to the satisfaction of a licensed broker who is willing to continue to oversee and supervise his real estate transactions. He terminated the employment of all employees of Redlands Realty, including Kay Novak, and no longer intends to act in a supervisory position. Although Jeffrey Novak is liable for Kay Novak's conduct under the Real Estate Law, he has not been charged with any crime with respect to the consumer complaints and no evidence was presented to show that he has any prior criminal record. Jeffrey Novak has exhibited honesty and integrity to those who have had the opportunity to observe his conduct over the course of years.

13. All material evidence pertained to Jeffrey Novak's failure to carry out his duties as a real estate broker and as owner and designated officer of a real estate corporation. No evidence was presented to show that he failed to comply with any provision of the Real Estate Law applicable to real estate salespersons; there was evidence, however, to show the contrary. (Factual Finding 17-19.) An unconditional revocation of all licensing rights would be unduly harsh. The task in disciplinary cases is preventative, protective, and remedial, not punitive. (*In re Kelley* (1990) 52 Cal. 3d 487.) Accordingly, taking into account all of the evidence, protection of the public will be achieved with a restricted salesperson license, subject to probationary terms that oversee respondent's continuing rehabilitation.

14. Any licensee found to have violated the law may be assessed and ordered to pay the Bureau's reasonable costs incurred to investigate and prosecute the action. (Bus. & Prof. Code, §10106.)

15. Complainant has presented satisfactory proof that reasonable costs were incurred in the amount of \$12,504.21 to investigate and enforce the case against respondent. The amount includes the cost to perform the audit, a reasonable function of investigating the David K. Complaint. Accordingly, Jeffrey Novak is liable under Business and Professions Code section 10106 for costs in the amount of \$12,504.21, payable to the Bureau in 24 monthly installments of \$521 until paid in full.

16. Government Code section 11519, subdivision (d), provides that the Board may require restitution of damages suffered as a condition of probation in the event probation is ordered.

17. Complainant has presented satisfactory proof that consumers sustained damages in the amount of \$280,339.53 as a direct result of respondents' acts and omissions. Accordingly, terms of probation shall include an order for restitution, provided the amounts paid shall be credited to any existing or subsequent judgment in a civil action and without absolving Kay Novak or Redlands Realty from any liability imposed by the Bureau or a court of competent jurisdiction.

ORDER

All licenses and licensing rights of Jeffrey Novak under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Jeffrey Novak pursuant to Business and Professions Code section 10156.5 if he makes application therefor and pays to the Bureau the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Jeffrey Novak 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 restricted license issued to Jeffrey Novak may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of his conviction or plea of nolo contendere to a crime which is substantially related to his fitness or capacity as a real estate licensee.

2. The restricted license issued to Jeffrey Novak may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Jeffrey Novak 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.

///

Not Adopted

Not Adopted

3. Jeffrey Novak 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 two years have elapsed from the effective date of this Decision.

4. Jeffrey Novak 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 real estate broker on a form approved by the Bureau which shall certify:

- a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
- b. 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.

5. Jeffrey Novak shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Bureau that he 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 Jeffrey Novak fails to satisfy this condition, the Bureau may order the suspension of the restricted license until Jeffrey Novak presents such evidence. The Bureau shall afford Jeffrey Novak the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Jeffrey Novak shall pay the Bureau the amount of \$12,504.21, representing its costs to investigate and prosecute this case, payable in 24 monthly installments of \$521, beginning on the first day of the calendar month after the effective date of this Decision and continuing until paid in full.

7. Jeffrey Novak shall pay restitution in the amount of \$280,339.53 provided the amounts paid shall be credited to any existing or subsequent judgment in a civil action and without absolving Kay Novak or Redlands Realty from any liability imposed by the Bureau or a court of competent jurisdiction.

DATED: October 29, 2015

DocuSigned by:
Matthew Goldsby
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MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings