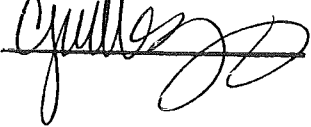


FILED

APR - 3 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of

ROSEMARIE L WILSON AND
JOSEPH BUSTAMANTE GONZALES,

Respondents.

) CalBRE No. H-39385 LA

) OAH No. 2014040840

DECISION

The Proposed Decision dated February 24, 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 Rosemarie L. Wilson.


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.

APR 23 2015

This Decision shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED 3/24/2015.

REAL ESTATE COMMISSIONER


WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROSEMARIE L. WILSON and
JOSEPH BUSTAMANTE GONZALES,

Respondents.

Bureau No. H-39385 LA

OAH No. 2014040840

PROPOSED DECISION

On November 5-6, 2014, this matter was heard by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, in Los Angeles. This matter was previously consolidated with OAH case number 2014040841, a Statement of Issues regarding an application submitted by Coastal Sky Realty, Inc. (CSRI), a corporation for which Joseph Gonzalez, a licensed real estate broker, serves as Broker-Officer and a corporate director.

Respondents Rosemarie L. Wilson (Wilson) was present at hearing. Respondent Joseph Bustamante Gonzales (Gonzales) was present and represented himself. Gonzalez was also present on behalf of and Coastal Sky Realty, Inc. (CSRI.) Wilson and CSRI were represented by Frank M. Buda, Esq.

Veronica Kilpatrick, Deputy Real Estate Commissioner (complainant), Bureau of Real Estate (Bureau), was represented by Lissete Garcia, Counsel.

On August 14, 2014, this matter and OAH No. 2014040841 (a Statement of Issues matter) were consolidated for hearing.

At the beginning of the hearing on November 5, 2014, Gonzales, on behalf of CSRI, filed a written withdrawal of CSRI's application for a real estate corporation license. All respondents stipulated that the Statement of Issues related to the denial of that application would be dismissed and that the hearing would proceed as to the Accusation only. Concurrent with the issuance of this Proposed Decision, an Order of Dismissal will be issued in OAH No. 2014040841.

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Gonzales' written withdrawal of the application was included as part of exhibit 1, which contains the jurisdictional documents for the Statement of Issues (OAH No. 2014040841.) Exhibit 1A contains the jurisdictional documents in the instant matter. Both exhibits were marked for identification at the beginning of the hearing on November 5, 2014, when the two matters were consolidated.

Exhibit 1 will be forwarded to the Bureau, together with an Order of Dismissal relating to the Statement of Issues under OAH No. 2014040841. Exhibit 1A and all other exhibits (except exhibit 1) will be forwarded to the Bureau under this matter, which relates to the Accusation (OAH No. 2014040840.)

At the conclusion of the hearing, the record was left open in order to allow the parties to submit closing briefs, which were due no later than December 5, 2014. On December 4, 2014, complainant's closing brief was received and was marked for identification as exhibit 23. On December 5, 2014, Wilson's closing brief was received, albeit after business hours, and was marked for identification as exhibit L. December 5, 2014, was a Friday. The briefs were received by the ALJ during the next work-week. The briefs were thereafter reviewed by the ALJ and this matter was submitted for decision on December 11, 2014.

The issuance of this decision was delayed by the press of business and annual training for all ALJ's from January 26-30, 2014. This Proposed Decision includes findings regarding the relevant chronology and history of both the Accusation and the Statement of Issues, as necessary, in order to ensure a comprehensive decision.

In summary, the Accusation contains allegations against Wilson, a licensed salesperson working under Gonzales, a licensed broker. Gonzales was the responsible broker in an application for a real estate corporation license, which he filed on behalf of CSRI. Gonzales' broker license had been previously suspended, but the suspension was not disclosed in the application. Although no license was issued to CSRI, it had a website, under construction by Wilson, which offered to perform property management services, and which listed the license number for Wilson, not Gonzales. The website listed CSRI's address as the same address as a branch office of Gonzales. Complainant alleges that Wilson and Gonzales violated statutes requiring proper licensure, that Gonzales did not properly supervise Wilson, and that Gonzales failed to disclose the prior suspension of his real estate broker license in CSRI's application. Complainant also alleges certain acts "in aggravation" relating to a prior Order and two Decisions issued by the Bureau, as more fully set forth below.

FACTUAL FINDINGS

Jurisdiction

1A. On March 25, 2014, complainant filed an Accusation in OAH No. 2014040840 (Bureau No. H-39385 LA.)

1B. On March 25, 2014, complainant filed a Statement of Issues in OAH No. 2014040841 (Bureau No. H-39384 LA.) On April 7, 2014, complainant filed a First Amended Statement of Issues.

1C. Complainant filed the Accusation, the Statement of Issues and the First Amended Statement of Issues in her official capacity.

2A. On April 2, 2014, Wilson and Gonzales filed a Notice of Defense, which requested a hearing on the Statement of Issues. The Bureau determined that the Notice of Defense was sufficient to conclude that Wilson and Gonzales had requested a hearing on the Accusation, as well as the Statement of Issues.

2B. Wilson and CSRI filed two additional Notices of Defense, prepared by Mr. Buda, as follows: On April 15, 2014, CSRI filed a Notice of Defense, which requested a hearing on the Statement of Issues. On April 15, 2014, Wilson filed a Notice of Defense, which requested a hearing on the Accusation.

Dismissal of the First Amended Statement of Issues

3. The First Amended Statement of Issues is no longer at issue because Gonzales withdrew CSRI's application for a real estate corporation license on the first day of hearing. The parties stipulated to a dismissal of the First Amended Statement of Issues. Concurrent with the issuance of this decision, an Order of Dismissal will be issued in OAH No. 2014040841. CSRI's application is discussed in factual findings 17-21, because the contents of the application are also an issue in the Accusation.

Licensing History of Wilson and Gonzales

4. On April 21, 2011, the Bureau issued real estate salesperson license number S01869009 to Wilson. The license was active at all relevant times and is set to expire on April 20, 2015, unless renewed.

5. On March 28, 1975, the Bureau issued real estate broker license number B00399062 to Gonzales. The license was active at all relevant times and is set to expire on May 3, 2015, unless renewed. Gonzales has been Wilson's employing broker since April 21, 2011.

Complainant's Allegations Made "In Aggravation"

6A. Wilson has a son named Delon Ridke (Ridke). Ridke owned a business called Rent for Tomorrow's World (RFTW), which held a real estate corporation license. Complainant contends that Ridke was involved in unscrupulous activity at RFTW. RFTW's real estate corporation license was revoked in 2012 and complainant contends that Wilson was involved in the business activities at RFTW.

6B. Complainant contends that the following allegations should be considered in aggravation as to Wilson.¹ The underlying facts and circumstances surrounding these allegations occurred earlier in time as compared to the conduct of Wilson and Gonzalez at issue. In order to ensure that this decision discusses complainant's allegations as they occurred chronologically, these allegations are appropriately discussed prior to the subsequent conduct of Wilson and Gonzales at issue in this matter. The Accusation, at paragraphs 16-18, alleges²:

(a) Ridke has never held a real estate license.

(b) On June 27, 2012, the Bureau filed an Order to Desist and Refrain (Order; exhibit 14), in Bureau No. H-38220 LA, against Ridke and "Rose Wilson," among others, for violating Business and Professions Code³ section 10130, while engaged in property management services at RFTW.

(c) On January 2, 2013, the Bureau issued a Default Decision, in Bureau No. H-38152 LA, which revoked the real estate corporation license of RFTW. On March 4, 2014, the Bureau issued a Decision, also in Bureau No. H-38152 LA, which revoked the real estate broker license of Dennis James Sullivan (Sullivan Decision), the licensed real estate broker for RFTW. These two Decisions are included in exhibit 16.

7A. In addition to the allegations stated above, complainant made additional contentions at hearing which relied on the findings and conclusions stated in the Order and the two Decisions. Those broader contentions and the allegations are summarized in factual finding 6 and are discussed in factual findings 7B and 7C.

7B. Wilson's son, Ridke, has never held a license issued by the Bureau. In early 2011, Ridke was working under the real estate corporation license of RFTW, which he owned. RFTW eventually went out of business and its real estate corporation license was revoked. The licensed real estate broker for RFTW, Dennis Sullivan, also had his license revoked. Complainant contends that Ridke was involved in unscrupulous activity while working at RFTW. Complainant also contends that Wilson was somehow involved with RFTW's business activities. It was not established that Wilson was involved with RFTW's business activities as alleged. The only evidence of any connection between Wilson and RFTW was that Wilson occasionally volunteered to answer the phones at RFTW. Wilson was not paid for her occasional and voluntary assistance, which she performed, at her son's

¹ The Accusation does not state against whom these allegations are made. However, complainant's closing brief, page 8, discusses these allegations as applying to only Wilson.

² The allegations are not quoted verbatim.

³ All further statutory references are to the Business and Professions Code unless stated otherwise.

request, when RFTW was busy. Wilson did not receive any money from RFTW for any reason. While Wilson is Ridke's mother, it was not established that his acts while at RFTW should be imputed to Wilson.

7C. Ridke formed and incorporated CSRI in 2011. A few months later, Ridke gave ownership and control of CSRI to Wilson. Complainant contends that because Ridke owned RFTW, which had its real estate corporation license revoked, there must have also been some illicit acts performed during the incorporation and transfer of CSRI to Wilson. It was not established that Ridke performed any improper acts during the incorporation and transfer of CSRI to Wilson. Similarly, it was not established that Wilson performed any improper acts when she accepted control of CSRI from Wilson.

8. In attempting to impute Ridke's conduct to Wilson and in attempting to establish a connection between Wilson and RFTW, complainant relies on the Order and two prior decisions (referenced in factual finding 6), which all relate to the business activities at RFTW. As discussed immediately below, these documents are inadmissible and did not establish any wrongdoing by Wilson.

Exhibits 14 and 16

9. The ALJ deferred ruling on the admissibility of exhibit 14 (the Order referenced in factual finding 6(b)) and exhibit 16 (the Default Decision and Sullivan Decision as referenced in factual finding 6(c).) Wilson objected to both exhibits, as fully set forth on the record. A final evidentiary ruling was deferred in order to allow the parties to address the issues in their closing briefs. For the reasons stated below, Wilson's objections are sustained. Exhibit 14 and 16 are not admitted into evidence. The allegations based on these three exhibits, summarized in factual findings 6(b) and 6(c), were not established.

10. Complainant contends the Order filed in Bureau No. H-38220 LA should be admitted into evidence and considered in aggravation. The Order includes findings of fact and conclusions of law. Wilson objects, in part, because the Order was not issued with Wilson's full name and because the Order was never served on Wilson. The Accusation alleges that the Order was issued against Wilson, but that allegation was not established. A review of the Order reveals that "Rose Wilson" was named as a respondent. However, the Accusation filed in this matter lists "Rosemarie L. Wilson" as a respondent. Thus, the order to "... desist and refrain from: performing any acts . . . for which a real estate broker license is required . . ." was not issued against Wilson, but rather, a Rose Wilson. Complainant contends, but did not establish, that the Bureau intended the Order to name Wilson, rather than some other person named Rose Wilson. However, complainant did not offer sufficient evidence to establish the Bureau's intent. Complainant further contends that Bureau personnel mistakenly concluded that Rose Wilson was an unlicensed person, and therefore failed to realize that Rose Wilson was also Rosemarie L. Wilson, who had held a real estate salesperson license for more than a year on the date the Order was issued. Insufficient evidence was offered to establish complainant's explanation. It was not established why or how the Bureau personnel concluded that Rose Wilson was not licensed or how her being

unlicensed would prevent the Bureau from determining that Rose Wilson was respondent Wilson, or that Wilson's name was incorrectly listed on the Order. Complainant did not establish that a mistake by Bureau personnel thereafter relieves the Bureau of its obligation to properly identify all parties and to properly serve all pleadings on said parties. The Order was not received by Wilson until the first day of hearing. Wilson did not have an opportunity to challenge the Order. Complainant did not establish that Rose Wilson is the same person as respondent Wilson in this matter.

11A. Complainant contends the Default Decision revoking RFTW's real estate corporation license, and the Sullivan Decision revoking the real estate broker license of RFTW's broker, in Bureau No. H-38152 LA, should be admitted into evidence. Similar to the Order, Wilson was not named as a party in either Decision, nor was Wilson served with either Decision. These documents, which contain detailed factual findings and legal conclusions, are inadmissible as to Wilson as she was not a party, she was not served, and she did not have a due process opportunity to defend herself in these matters. Use of the Order and the two Decisions in this matter would be a denial of Wilson's due process rights. (See, *Pegues v. Civil Service Com.* (1998) 67 Cal.App.4th 95, and *Bledsoe v. Biggs Unified Sch. Dist.* (2008) 170 Cal.App.4th 127, 141.)

11B. As discussed in factual finding 6(B), complainant alleged that RFTW's real estate corporation license was revoked in January 2013 and Sullivan's broker license was revoked in March 2014. Prior to the dates of the those alleged revocations of RFTW's license and Sullivan's license, in September 2012, the Bureau's investigator determined that Wilson was Ridke's mother and that Ridke had filed the paperwork to incorporate CSRI. The investigator also discovered the Order. Nevertheless, the Bureau did not name make any attempt to serve the Order on Wilson. The Bureau also did not name, or attempt to add, Wilson as a party in Bureau No. H-38152 LA. Therefore, the Bureau did not take timely actions to remedy its "mistake" as complainant contends. It would be highly prejudicial to admit exhibits 14 and 16 because the Bureau could then contend that the factual findings and legal conclusions stated in these documents should be deemed established as to Wilson, which would violate Wilson's due process rights.

12. For all of the above-stated reasons, exhibits 14 and 16 are not admitted into evidence. Complainant did not establish the allegations asserted "in aggravation" as stated in paragraphs 16-18 of the Accusation or as more broadly contended at hearing.

13. Complainant alternatively contends that exhibits 14 and 16 are admissible to impeach Ridke's letter (exhibit 21), which complainant moved into evidence and described as supportive of Wilson. The exhibits are not admissible to impeach Ridke's letter because it was complainant, not Wilson, who offered Ridke's letter into evidence. Complainant may not impeach evidence which she offered into evidence.⁴

⁴ Impeachment may be limited under the circumstances. For example, in *People v. Newton* (1970) 8 Cal.App.3d 359, a party's right to impeach his own witness, permissible generally under Evidence Code section 785, was not available because the witness had not

The Formation of Coastal Sky Realty Incorporated

14. As previously discussed, on January 24, 2011, Ridke formed CSRI, a California corporation. Approximately one month later, Ridke gave CSRI to Wilson.

15. On March 4, 2011, Wilson filed a Statement of Information with the California Secretary of State which listed Wilson as Chief Executive Officer, Secretary, and Chief Financial Officer for CSRI.

16. On August 1, 2011, Wilson filed another Statement of Information with the Secretary of State which added Gonzales as a director for CSRI. The Statement described CSRI's business as property management and real estate sales.

Gonzales' Failure to Disclose Prior Discipline in CSRI's Application

17. On May 21, 2012, Gonzales, on behalf of CSRI, filed an application for a real estate corporation license. The application identified Gonzales as the licensed real estate broker for CSRI. Gonzales signed the application under penalty of perjury.

18. Question 19 of CSRI's application stated:

HAVE YOU EVER HAD A DENIED, SUSPENDED, RESTRICTED OR REVOKED BUSINESS OR PROFESSIONAL LICENSE (INCLUDING REAL ESTATE) IN CALIFORNIA OR ANY OTHER STATE?

Gonzales answered "NO" and failed to reveal that his real estate broker license had been previously suspended, as discussed immediately below.

19. On June 12, 2009, the Bureau filed an Accusation against Gonzales in Bureau No. H-36049 LA. The matter was resolved when the parties entered into a Stipulation and Agreement. On September 20, 2010, the Bureau suspended Gonzales' real estate broker license for 90 days. The suspension period was stayed and terms and conditions were imposed.

20. The CSRI application was filed because Wilson wanted to begin performing property management services under her corporation. Wilson asked Gonzales if he would serve as the required licensed real estate broker for CSRI. Wilson also asked Gonzales to file CSRI's application. Gonzales agreed. Wilson then prepared the application, Gonzales

testified against the impeaching party. Ridke's letter is a written statement, not under oath which is not the equivalent of testimony, nor was there any opportunity for Ridke to be cross-examined. Exhibits 14 and 16 are not admitted into evidence because to do so would violate Wilson's due process rights as discussed in factual finding 11(B). The possible use of these exhibits as "impeachment" does not remedy the due process problems.

signed the application, and Wilson submitted it to the Bureau. Gonzales signed the application, rather than Wilson, because only a licensed real estate broker is authorized to apply for a license on behalf of a corporation.

21. Gonzales did not offer any explanation regarding his failure to disclose the prior discipline imposed on his real estate broker license. His failure to disclose his prior discipline constitutes the attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a false statement of material fact required to be revealed in said application.

Allegations Against Wilson and Gonzales

22. Complainant alleges⁵ that Wilson and Gonzales engaged in the following improper conduct:

(a) For an unknown period of time, CSRI has been soliciting and offering to perform property management and real estate sales services on a website located at www.csrinc.us (website.) CSRI also uses the fictitious business names "CSRinc Property Services and Management" and "CSRinc/IVR." On its website, CSRI claims to be operating under Wilson's real estate salesperson license number 01869009.

(b) CSRI has been operating from an office located at 24487 Sunnymead Blvd., Moreno Valley, California, 92553. Gonzales listed this address as a branch office on his real estate broker license from February 10, 2011, through July 22, 2013.

23. In making findings regarding the above-stated allegations, the following statute and regulation are informative. Code section 10130 states, in pertinent part:

It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department, or to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state without having obtained a license endorsement.

24. California Code of Regulations, title 10, section 2725, states in pertinent part: "A broker shall exercise reasonable supervision over the activities of his or her salespersons."

Findings re Wilson

25. Wilson is 58 years' old. Since receiving her real estate salesperson license in April 2011, Wilson has worked continuously at Inland Valley Realty (IVR) under Mr.

⁵ The allegations are not quoted verbatim. (Accusation, ¶¶ 15-18.)

Mosely, the office manager. Last year Wilson became divorced. She earns approximately \$30,000 a year. Wilson was unaware of the prior discipline imposed against Gonzales' license. She believed that CSRI's application would be approved and that the Bureau would issue CSRI a real estate corporation license forthwith.

26A. In anticipation of CSRI being issued a license, Wilson began creating a website for CSRI. She began working on the website before CSRI was issued a license so that she would be ready to perform property management services on the website as soon as CSRI was licensed. Wilson used an online template as a format for CSRI's new website. The template allowed Wilson to add CSRI's information, such as its address and phone number. She also listed her contact information and her real estate salesperson license number. The website offered property management services and other real estate services to the public. The website was only partially completed and it was fairly simplistic. Wilson did not intend the website to offer CSRI's services before the real estate corporation license was issued to CSRI. However, the website did offer to perform services requiring that CSRI be licensed. Complainant established that Wilson solicited and offered to perform property management and real estate sales services on CSRI's website. In mitigation, Wilson was unaware that having an unfinished website, which listed her license number, and which offered property management services and other real estate services, prior to CSRI's licensure, was prohibited.

26B. The website also listed CSRI as having an office located at 24487 Sunnymead Blvd., Moreno Valley, California, 92553. Gonzales listed this address as a branch office on his real estate broker license from February 10, 2011, through July 22, 2013. Real estate business was conducted at this address, but not under CSRI's name. Nevertheless, since the location was open for business, and the address was listed on the CSRI website as an office address, it evidences an offer to perform services under CSRI's name, prior to CSRI being issued a license. In mitigation, no CSRI business was actually conducted at this location between 2011 and 2013, nor were there any inquiries from the public. There was no actual real estate business conducted under the CSRI name, which supports a finding that Wilson's actions were negligent and not with the intent to actually use CSRI to perform unlicensed activity.

27. Wilson acknowledged that she should have been aware that it was improper for CSRI to have a website, which offered real estate services prior to CSRI's being licensed. Wilson also acknowledged that she should have determined how to insure that the website was not visible to the general public, until such time as CSRI was issued a license. Wilson acknowledged her mistakes and expressed remorse. In mitigation, the website stated that it was "under construction." A person intending to actually perform unlicensed activity on said website would be unlikely to state that the website was not complete, thus potentially turning away potential business. Wilson closed the CSRI website in April 2014 after she became aware of the Bureau's concerns.

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Findings Re Gonzales

28. Gonzalez acknowledged that he has essentially “rented” his real estate broker license to 16 corporations over the last 10 years. He is 80 years’ old, has been licensed for 40 years, and has difficulty hearing people speak. Gonzales acknowledged that his advancing age and hearing deficits can result in him becoming easily confused regarding names and dates. For example, Gonzales testified on both days of hearing. On the second day, Gonzales changed almost every answer he had given on the first day. Gonzales was unable to explain why some branch addresses were listed on his license. He only became aware of Wilson’s website during the hearing, even though he is her supervising broker. Gonzales did not reasonably supervise Wilson. Other than signing the application on behalf of CSRI, Gonzales did not have significant contact with Wilson on a regular basis.

29. Gonzales admitted that he visited the CSRI office address, and all of the offices for which his is the broker, for only a few hours each week. He allows the office managers at each office to manage the daily activities, despite knowing that these managers are not licensed real estate brokers and that he is responsible for supervising the salespersons listed on his license. Gonzales did not seem to understand that relying on unlicensed office managers to control the offices for which he is the licensed broker is unacceptable. Similarly, he appeared unconcerned that he first learned that Wilson was operating a CSRI website during the hearing. Gonzales also had a similar lack of understanding that he is responsible for supervising the salespersons listed under his license. He rarely communicated with Wilson regarding her work as Inland Valley Realty. Gonzales did not have any supervisory responsibility as the designated broker for CSRI, because CSRI never was issued a license. However, because Gonzales was Wilson’s existing broker, and he knew that Wilson intended to begin operation of CSRI as soon as CSRI was issued a license, he should have inquired as to whether Wilson was performing any pre-licensing activity regarding CSRI. It was established that Gonzales is not performing the essential functions of being a licensed real estate broker. Given all of the reasoning above, Gonzales is not qualified to serve in any licensed capacity at this time.

Other Findings and Costs

30. Complainant called Sang Yi as a witness to impeach Wilson’s testimony. Wilson previously lived in a home owned by Mr. Yi’s parents. Mr. Yi’s testimony was not considered by the ALJ because it was not reliable. Mr Yi has suffered a prior felony conviction, which has a negative effect on his credibility (see Evid. Code. § 788). He also became unreasonably defensive and angry during cross-examination. Mr. Yi became very distracted by his desire to successfully engage in banter with Wilson’s counsel. He appeared to not be concerned with whether his answers were truthful or accurate. Most of his answers were non-responsive to the question and his testimony is entitled to little weight.

31. Complainant requested reimbursement for the costs of investigation (\$2447.85) and enforcement (\$2011.40) in this matter for a sum of \$4,459.25. The costs for investigation and enforcement, which led to the Accusation and the Statement of Issues, were

all submitted as costs incurred in this matter (OAH No. 2014040840.) However, the CSRI application, which led to the filing of the Statement of Issues, was also investigated by Bureau personnel. The Bureau investigator estimated that half of the total investigation costs were expended on each matter (OAH No. 2014040840 and 2014040841.) The costs of enforcement are reasonably apportioned in the same manner. The costs are deemed reasonable and 50 percent of the sum is apportioned to each matter. Since it was Gonzales' failure to disclose his past discipline is a basis for discipline, and led to the Statement of Issues being filed, half of the total costs are apportioned to Gonzales, in the sum of \$2,229.62. The other half of the total costs is attributed to the instant matter and is apportioned 50 percent to Wilson and 50 percent to Gonzales. Therefore, \$1,114.82 in costs is assigned to Wilson. As for Gonzales, the same sum (\$1,114.82) is added to the \$2,229.62 in costs previously assigned to him, for a total of \$3,344.43 in costs assigned to Gonzales. Apportionment of costs is appropriate under these circumstances. (See, *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 920-921.)

32. A respondent's inability to pay costs is an appropriate factor to consider in determining whether costs should be awarded. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.) Wilson contended, but did not establish, that she is unable to pay costs. Wilson's request to reduce costs was made during hearing when she was facing a claim of \$4,459.25 in total costs. The costs actually assigned to Wilson are only 25 percent of that amount, or a 75 percent reduction of that amount. Wilson earns approximately \$30,000 per year. Wilson did not establish that she is unable to pay \$1,114.82 in costs assigned to her.

LEGAL CONCLUSIONS

1. Complainant's burden of proof in this professional licensing matter requires that the grounds for discipline be proven by "clear and convincing evidence to a reasonable certainty." (*Borrer v. Dept. of Real Estate* (1971) 15 Cal.App.3d ; *Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204.)

2. Cause exists to suspend or revoke Wilson's real estate salesperson license under Code section 10177, subdivision (d), for performing acts, while doing business as CSRI, in violation of Code section 10130, as set forth in factual findings 22-29. Wilson's actions were negligent and the public did not suffer any injury. Allowing Wilson to remain licensed in a restricted capacity will not endanger the public health, safety, or welfare

3. Cause exists to suspend or revoke Gonzales' real estate broker license under Code Section 10177, subdivision (d), for performing acts, while doing business as CSRI, in violation of Code section 10130, as set forth in factual findings 22-29.

4. Cause exists to suspend or revoke Gonzales' real estate broker license under Code section 10177, subdivision (a), for Gonzales' failure to disclose the prior suspension of his real estate broker license, which constitutes the attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a false statement of material fact required to be revealed in said application, as set forth in factual findings 17-21.

5. Cause exists to suspend or revoke Gonzales' real estate broker license under Code section 10177, subdivisions (d) (violation of the Real Estate Law), (h) (failure to exercise reasonable supervision over the activities of his salespersons), and (g) (demonstration of negligence or incompetence), and California Code of Regulations, title 10, section 2725 (failure to exercise reasonable supervision). Gonzales allowed Wilson to operate CSRI without a license and he was negligent in failing to exercise reasonable supervision over Wilson, as set forth in factual findings 22-29 and Legal Conclusion 3.

6. Under Code section 10106, the Commissioner may request that the administrative law judge direct a licensee who is subject to discipline to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The total reasonable costs of investigation and enforcement are \$ 4,459.25. Gonzales must reimburse the Bureau the sum of \$ 3,344.43. Wilson must reimburse the Bureau the sum of \$1,114.82, for the reasoning set forth in factual finding 32.

ORDER

Joseph Bustamante Gonzales

1. All licenses and licensing rights of respondent Joseph Bustamante Gonzales under the Real Estate Law are revoked.

2. Joseph Bustamante Gonzales shall reimburse the Bureau of Real Estate, for the costs of investigation and enforcement apportioned and assigned to him, in the amount of \$3,344.43. Gonzales shall not file an application for licensure, or a petition for reinstatement of license, with the Bureau until all costs are paid. The Bureau has the discretion, but is not required, to schedule a monthly payment plan with Gonzales.

Rosemarie L. Wilson

All licenses and licensing rights of Rosemarie Wilson under the Real Estate Law are revoked; provided, however, that a restricted real estate salesperson license shall be issued to Rosemarie Wilson pursuant to Business and Professions Code section 10156.5, if Rosemarie Wilson makes application therefor and pays to the Department 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 Rosemarie Wilson 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 Rosemarie Wilson may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Rosemarie Wilson's conviction or plea of nolo contendere to a crime which is substantially related to Rosemarie Wilson's fitness or capacity as a real estate licensee.

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

3. Rosemarie Wilson 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. Rosemarie Wilson 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 of Real Estate 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. Rosemarie Wilson shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Rosemarie Wilson 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 Rosemarie Wilson fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Rosemarie Wilson presents such evidence. The Commissioner shall afford Rosemarie Wilson the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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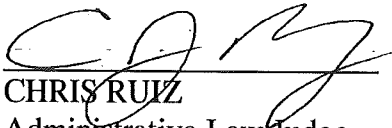
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6. Rosemarie Wilson shall reimburse the Bureau, for the costs of investigation and enforcement apportioned and assigned to her in this matter, in the sum of \$ 1,114.82. The Bureau has the discretion, but is not required, to schedule a monthly payment plan with Rosemarie Wilson.

DATED: February 24, 2015.


CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings