

FILED

MAY 14 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

JEFFREY DOUGLAS KRUGER,

Respondent.

) CalBRE No. H-39394 LA
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) OAH No. 2014100521
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DECISION

The Proposed Decision dated April 9, 2015, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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


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

1 Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are
2 attached hereto for the information of respondent.

3 This Decision shall become effective at 12 o'clock noon on JUN 04 2015.

4 IT IS SO ORDERED

5 5/9/2015
6 REAL ESTATE COMMISSIONER

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8 WAYNE BELL
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**BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation of

JEFFREY DOUGLAS KRUGER,

Respondent.

Case No. H-39394 LA

OAH No. 2014100521

PROPOSED DECISION

This matter came on regularly for hearing on March 30, 2015, at Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Robin Trujillo (Complainant) was represented by Cheryl D. Keily, Real Estate Counsel.

Jeffrey Douglas Kruger (Respondent) was present and represented himself.

Oral and documentary evidence was received. The record was held open to and including April 9, 2015, for Complainant to serve and file an updated license certification, and for Respondent to serve and file objections to it. The updated license certification was timely received and was admitted as part of Complainant's Exhibit 2.¹ No objections to the document were received. On April 9, 2015, the record was closed, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant, who is a Deputy Real Estate Commissioner of the State of California, made the Accusation while acting in her official capacity.

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¹ The updated license certification was accompanied by a cover letter from Complainant's counsel. That letter is made part of the record but not considered as evidence.

2. Respondent was issued a conditional salesperson license by the Department of Real Estate² on August 8, 1990. The license expired on February 8, 1992 and was suspended indefinitely the next day for failure to satisfy educational requirements pursuant to Business and Professions Code sections 10153.3, subdivision (c) and 10153.4, subdivision (c). It was reinstated as of January 28, 1994, and expired on August 7, 1994. The license was reissued through examination on May 23, 2007, and it expired on May 22, 2011. Respondent renewed his license late on June 17, 2011. The license will expire on June 16, 2015, unless renewed.

3. Respondent's application for an Individual Mortgage Loan Originator License Endorsement was approved as of May 28, 2014.

4. At the administrative hearing, Complainant established the truth of most of the allegations in paragraphs 3, 4, 5, and 6 of the Accusation. Those allegations are repeated verbatim below, except where indicated, and are incorporated herein as factual findings.

3.

At all times mentioned herein, Respondent engaged in the business of, acted in the capacity of, and/or advertised a loan modification service offering to perform and performing loan modification and negotiation services with respect to residential mortgage loans which were secured by liens on real property for compensation or in expectation of compensation.

4.

[On January 29, 2013,] Respondent published or caused to be published an advertisement offering to perform loan modification services with respect to loans secured by liens on real property for compensation. Respondent's advertisement represented that he had been providing loan modifications since 2007, and that he had established "inside connections with all the major lenders." The advertisement was posted to the internet at the following website address www. Craigslist.org.

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² The Department of Real Estate has since become the Bureau of Real Estate (Bureau), operating under the auspices of the Department of Consumer Affairs.

5.

At all times mentioned herein, Respondent was employed by a licensed real estate broker. From October 23, 2008, through May 22, 2011, and from June 21, 2011, to January 21, 2012, Respondent was employed by Compass Real Estate ("Compass"), a licensed real estate corporation. From January 22, 2012, to the present time Respondent was employed by [Coburt] Holding, Inc. (["Coburt"]), a licensed real estate corporation. Neither Compass nor [Coburt] had prior or contemporaneous knowledge of the loan modifications activities engaged in by Respondent.

6.

Respondent's loan modification activities include, but are not limited to the following:

a. On or about April 21, 2011, Reza A. entered into a written agreement with Respondent, doing business under the fictitious name "MLSCD, Inc." By the terms of the agreement Respondent agreed to perform loan modification services with respect to a loan secured by the real property located at 11855 Goshen Avenue, Unit 201, Los Angeles, Ca [sic] 90049. On or about January 15, 2012, Reza A. gave Respondent the sum of \$2,000 in payment for the loan modification services Respondent provided to her.

b. On or about May 31, 2012, Annie N. entered into a written agreement with Respondent, doing business under the fictitious name "MLSCD, Inc." By the terms of the agreement Respondent agreed to perform loan modification services with respect to a loan secured by the real property located at 2812 Ridgeville Drive, Canyon Country, Ca [sic] 91387 in exchange for payment in the amount of \$3,000. [¶] . . . [¶]

d. On or about October 7, 2013, Special Investigator Pak ("Pak") of the Bureau made an undercover telephone call to Respondent at the phone number listed in the website advertisement described in Paragraph 4, above. Pak identified himself to Respondent as "Joe" who was seeking a loan modification with respect to a condominium he owned. During the conversation Respondent advised Pak that he could provide him with loan modification services in exchange for a retainer fee of \$1,500, and another fee of \$2,500 if Respondent obtained the loan modification.

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5. On October 30, 2013, in response to an inquiry by Investigator Pak, Respondent wrote:

1. My services are limited to loan modifications. I fee [sic] is \$3000.00. My service includes compilation of the Loan Modification Packet, updating the contents of said packet when needed, following up with both lender and homeowner, monitor the homeowner to make sure he/she makes his/her trial payments on time, as well as make sure all the lender's guidelines are followed correctly by the homeowner to insure their chances of a successful approval for a loan modification.

2. I began providing this service in January 2011 on a part time basis.

3. I have worked on, and completed 10 loan modifications in the past 2 years. [¶] . . . [¶]

6. I am not operating under the authority of a license issued by another California agency or under the exemption from the Bureau of Real Estate's Licensing Laws.

(Exhibit 6.)

6. During the relevant time period, Respondent did not hold a mortgage loan originator endorsement to his real estate salesperson license. He was unaware that he was required to hold such an endorsement while performing loan modification services.

7. In 2010, Respondent arranged to take the examinations necessary to obtain a mortgage loan originator endorsement, and he paid the fees necessary to sit for the examinations. However, he did not take the examinations because he decided that, since he did not intend to engage in refinancing, he would not need the endorsement. Nonetheless, Respondent continued to perform loan modification services, unaware of the requirement for a mortgage loan originator endorsement before he could do so.

8. Respondent offered and performed loan modification services on his own behalf through his own corporation, and not under the supervision or authority of any real estate broker. The brokers who employed him were unaware that he was offering and performing loan modification services.

9. Respondent did not apply for a mortgage loan originator endorsement until after a meeting with his employing broker and Investigator Pak in or around October 2013. By the time the Bureau issued the endorsement in May 2014, Respondent was no longer performing loan modification services.

10. Respondent has no history of license discipline. His wrongdoing in this case was a function of his misunderstanding of the law and not an intent to avoid it.

11. Complainant seeks recovery of investigation costs totaling \$2,345.50, and prosecution costs totaling \$1,535.25. The prosecution costs are reasonable. The investigation costs are not.

12. Specifically, on June 3, 2013, Investigator Pak billed one hour for "Deputy Review." Thereafter, he billed the following for "Deputy Review:"

10/7/13	1.75 hours
10/8/13	1.50 hours
10/15/13	0.80 hours
2/4/14	3.00 hours
2/5/14	1.50 hours
6/27/14	0.35 hours
10/14/14	<u>0.15 hours</u>

TOTAL	9.05 hours
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13. Deputy Pak's hourly rate was \$62. He billed \$561.10 for Deputy Review alone.

14. It is difficult to understand why it was necessary to review the file numerous times over a one-year period, mostly for extended periods of time, when the file was almost completely assembled in a relatively short period of time in 2013. Although periodic review of the file was probably necessary, over nine hours for the task was excessive, especially since Investigator Pak was the only investigator assigned to the case. The exorbitance of the billing is demonstrated by the entries of October 7 and 8, 2013, when Deputy Reviews of 1.75 hours and 1.50 hours were purportedly performed on two consecutive days, and February 4 and 5, 2014, when Deputy Reviews of 3.00 hours and 1.50 hours were performed on two consecutive days.

15. The billings for Deputy Review on October 8, 2013 and February 5, 2014 are disallowed. Reductions to 1.25 hours are made to the October 7, 2013 and February 4, 2014 Deputy Reviews. The remainder of the bill is unchanged. Accordingly, the costs of investigation are reduced by 5.25 hours which, at the \$62 hourly rate, totals \$325.50. The reasonable costs of investigation for this case total \$2,020. Coupled with the costs of prosecution, Complainant will recover costs in the total sum of \$3,555.25.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate salesperson's license pursuant to Business and Professions Code sections 10130, 10131, and 10177, subdivisions (d) and (g), for unlicensed real estate conduct, as set forth in Findings 2, 3, 4, 5, 6, 7, 8, 9 and 10.

2. Cause exists to discipline Respondent's real estate salesperson's license pursuant to Business and Professions Code sections 10166.01, subdivision (b)(1), 10166.02, subdivision (b), and 10177, subdivisions (d) and (g), for unlicensed conduct regarding mortgage loan activities, as set forth in Findings 2, 3, 4, 5, 6, 7, 8, 9 and 10.

3. Cause exists to grant Complainant's request for reimbursement of the costs of investigation and enforcement pursuant to Business and Professions Code section 10106, as modified, as set forth in Findings 11, 12, 13, 14, and 15.

4. Business and Professions 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.

5. Business and Professions Code section 10131 states:

A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

(a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.

(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.

(c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

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(e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

6. Business and Professions Code section 10166.01, subdivision (b)(1) states:

“Mortgage loan originator” means an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain.

7. Business and Professions Code section 10166.02, subdivision (b) states:

(b) No individual may engage in business as a mortgage loan originator under this article without first doing both of the following:

(1) Obtaining and maintaining a real estate license pursuant to Article 2 (commencing with Section 10150).

(2) Obtaining and maintaining a real estate license endorsement pursuant to this article identifying that individual as a licensed mortgage loan originator.

8. Business and Professions Code section 10177 states in relevant part:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following: [¶] . . . [¶]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2. [¶] . . . [¶]

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

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9. Respondent violated several provisions of the real estate law by engaging in the practice of loan modifications without a mortgage loan originator endorsement on his real estate salesperson's license and by doing so on his own without the authority or supervision of his employing broker.

10. In *Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518, the Court stated:

Disciplinary procedures provided for in the Business and Professions Code, such as section 10177, subdivision (d), are to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman.

11. In this case, Respondent was the type of salesperson to whom the *Handeland* court referred. The number of loan modifications in which he was involved is limited, and he engaged in loan modifications in ignorance of the law rather than defiance of it. Once informed of his violations, Respondent sought and obtained a mortgage loan originator endorsement even though he was no longer involved in that line of work. With no history of license discipline, he should be given the opportunity to prove himself worthy of his real estate salesperson's license and the Bureau's trust. However, he must do so while under the constraints of a properly-conditioned restricted license in order to protect the public safety, welfare, and interest.

ORDER

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

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

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2. The restricted license issued to Respondent 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.

3. Respondent 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 four years have elapsed from the effective date of this Decision.

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

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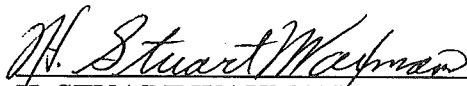
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2. Respondent shall reimburse the Bureau its costs of investigation and enforcement in the sum of \$3,555.25 within 90 days of the effective date of this decision. Respondent shall be permitted to pay these costs in a payment plan approved by the Bureau, with payments to be completed no later than three months prior to the end of the probation term.

Dated: April 9, 2015



H. STUART WAXMAN

Administrative Law Judge

Office of Administrative Hearings