

FILED

MAR 12 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-39415 LA
BRIAN RENE LINNEKENS,) L-2014050250
Respondent(s).)

ORDER STAYING EFFECTIVE DATE

On March 2, 2015, a Decision was rendered in the above-entitled matter to become effective March 23, 2015.

IT IS HEREBY ORDERED that the effective date of the Decision of March 2, 2015, is stayed for a period of 30 days to allow Respondent BRIAN RENE LINNEKENS to file a petition for reconsideration.

The Decision of March 2, 2015, shall become effective at 12 o'clock noon on April 23, 2015.

DATED: March 12, 2015.WAYNE BELL
Real Estate CommissionerBy: PHILLIP HILDE
Regional Manager

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

MAR 03 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	CalBRE No. H-39415 LA
)	
BRIAN RENE LINNEKENS,)	OAH No. 2014050250
)	
Respondent.)	
)	

DECISION AFTER REJECTION

This matter came on for hearing before Matthew Goldsby, Administrative Law Judge of the Office of Administrative Hearings ("OAH"), in Los Angeles, California, on September 15, 2014. Cheryl D. Keily, Counsel, represented the Complainant, Maria Suarez, Deputy Real Estate Commissioner for the State of California Bureau of Real Estate ("Bureau"). The Respondent BRIAN RENE LINNEKENS ("Respondent") appeared in person, and was represented by Edward O. Lear, Esq. Oral and documentary evidence were received.

On September 19, 2014, the Administrative Law Judge issued a Proposed Decision, which I declined to adopt.

My Decision is set forth herein.

Pursuant to California Government Code section 11517(c), Respondent was served with notice of my determination not to adopt the Proposed Decision of the

1 Administrative Law Judge along with a copy of said Proposed Decision. Respondent was
2 notified that the case would be decided by me upon the record, the transcript of proceedings
3 held on September 15, 2014, and upon any written argument offered by Respondent and
4 Complainant. Complainant timely submitted further written argument, but to date, Respondent
5 has not submitted a written argument.

6 I have given careful consideration to the record in this case including the
7 transcript of the proceedings of September 15, 2014. I have also considered the Argument
8 submitted by Complainant.

9 The following shall constitute the Decision of the Real Estate Commissioner in
10 this proceeding.

11 FINDINGS OF FACT

12 1. On May 20, 2009, the Bureau issued a real estate broker license to
13 Respondent. On November 22, 2012, Respondent's real estate broker license was suspended for
14 60 days with 30 days of the suspension stayed for 2 years subject to certain terms and conditions
15 enumerated in the Stipulation and Agreement in Bureau case no. H-37806 LA.
16 Respondent's real estate broker license is currently valid until May 19, 2017.

17 2. Complainant brought the Accusation against Respondent in the
18 Complainant's official capacity. Respondent's Notice of Defense was timely filed. The
19 Accusation is based upon Respondent's prior license discipline pursuant to California Business
20 and Professions Code sections 480(a)(3) and 10177(f).

21 3. On December 8, 1999, the State Bar of California issued a license to
22 Respondent to practice law in the state of California.

23 4. About the same time as when Respondent received his real estate broker
24 license, which was in May 2009, Respondent began doing business under the DBA of Home
25 Credit Law Center. The purpose of the business was to provide loan modification services to
26 distressed homeowners. He also provided bankruptcy services under Home Credit Law Center.

1 Respondent established a website offering his loan modification services to homeowners
2 throughout the United States even though he was never licensed to practice law in any other
3 jurisdiction except California.

4 5. In October 2009, California Senate Bill 94 ("SB 94") was enacted to
5 curtail abuses of persons offering loan modification services. The new law expressly prohibited
6 the collection of advance fees for loan modification services.

7 6. Respondent reviewed SB 94 based on his own training and experience as
8 an attorney and real estate licensee, and modified his business to provide do-it-yourself loan
9 modification services. He charged advanced fees for loan modification services leading up to,
10 but not including, direct negotiations with banks. After clients paid him a fee, Respondent
11 would evaluate information provided by his clients and provide guidance. If his clients
12 requested that he directly negotiated with the banks on their behalf, he would decline, and refer
13 them to three or four loan modification companies, including Affiliated Capital Partners, which
14 was owned by Nicholas Vincent Gottuso ("Gottuso"). Respondent testified he errantly believed
15 by not directly negotiating with banks, he was not offering loan modification services under SB
16 94 and also not practicing law. He did not consult with any other attorney or other expert to
17 substantiate this belief.

18 7. On May 24, 2010, Respondent expanded his business relationship with
19 Gottuso by becoming the designated officer of Go Affiliated Corporation, a mortgage company
20 owned by Gottuso.

21 8. Respondent testified he did not check the status of Gottuso's real estate
22 license with the Bureau or any references despite referring clients to Gottuso's loan modification
23 services company, Affiliated Capital Partners, and becoming the designated broker of Gottuso's
24 mortgage company, Go Affiliated Corporation. At the time of their association, Mr. Gottuso
25 already had disciplinary action against his real estate license, and had a restricted real estate
26 salesperson license.

1 9. On July 30, 2010, Respondent resigned as the designated broker of Go
2 Affiliated Corporation after discovering the Bureau was investigating Go Affiliated Corporation
3 for its loan modification services.

4 10. On May 2, 2011, the Washington State Department of Financial
5 Institutions ("WSDFI"), in case no. C-11-0633-11-SC01, filed a Statement of Charges and
6 Notice of Intent to Enter an Order to Cease and Desist, Prohibit from Industry, Impose Fines,
7 Order Restitution, and Collect Investigation Fees against Respondent. Respondent was given an
8 opportunity for a fair hearing, and was afforded other due process protections comparable to the
9 California Administrative Procedure Act. On April 12, 2012, WSDFI and Respondent entered a
10 consent order enjoining the respondent, individually and doing business as the Home Credit
11 Law Center, from mortgage services for a period of 10 years.

12 11. On November 2, 2012, in connection with Bureau's investigation
13 described above in Findings of Fact, paragraph 9, a Stipulation and Agreement was filed in
14 Bureau case no. H-37806 LA. The Commissioner found grounds to discipline Respondent's
15 real estate broker license pursuant to California Business and Professions Code section 10177(h)
16 (failure to exercise reasonable supervision and control of the activities of salespersons and/or
17 corporation). Effective November 22, 2012, Respondent's real estate broker license was
18 suspended for sixty (60) days with thirty (30) days stayed for two (2) years pursuant to certain
19 terms and conditions and the remaining thirty (30) days stayed if Respondent paid a monetary
20 penalty of \$200 per day.

21 12. On December 20, 2012, the State Bar of California, in case nos. 12-O-
22 13466, 12-O-13947, 12-O-14331, and 12-O-15872, filed a Notice of Disciplinary Charges
23 against Respondent, State Bar license no. 206144. Respondent was given fair notice of the
24 charges, an opportunity for a hearing, and other due process protections comparable to the
25 California Administrative Procedure Act, and only upon an express finding of a violation of law
26 by the agency or entity.

1 13. On September 19, 2013, in the Supreme Court of California, case no.
2 S211920 (State Bar Court nos. 12-O-13466 (12-O-13947, 12-O-14331; 12-O-15872)), the court
3 ordered Respondent be suspended for three (3) years from the practice of law, suspension stayed
4 and placed on three (3) years of probation with an actual suspension for two (2) years and until
5 he shows proof of his rehabilitation. This order became effective on October 19, 2013. To date,
6 Respondent is still suspended from the practice of law in California, and is set to remain
7 suspended until at least October 19, 2015. Respondent was also ordered to pay restitution to
8 two victims, and pass the Multistate Professional Responsibility Examination ("MPRE").
9 Respondent testified at the OAH hearing in the instant matter on September 15, 2014 that he
10 completed payment of restitution to the two victims, and was scheduled to take the MPRE in
11 November 2014.

12 14. Discipline on Respondent's State Bar license was based upon the
13 following facts and express findings of violations of law made by the State Bar of California:¹

14 a. Between at least March 26, 2010 and March 25, 2011, despite not being
15 licensed to practice law in the State of Washington, Respondent performed loan modification
16 services for no fewer than 46 Washington State residents for property located in the State of
17 Washington, in violation of Revised Code of Washington 2.47.170 and California Rule of
18 Professional Conduct 1-300(B).

19 b. In November 2012, despite not being licensed to practice law in the State
20 of Indiana, Respondent collected advanced legal fees for services related to loan modification
21 work from a couple in Indiana, in violation of California Rule of Professional Conduct 1-
22 300(B). Respondent did some preliminary work to obtain a loan modification, but was unable
23 to secure a loan modification for the couple.

24 ///

25
26

¹ Respondent also admitted these facts as true and that he was "culpable of violations of the specified statutes and
27 Rules of Professional Conduct" in the Stipulation Re Facts, Conclusions of Law and Disposition and Order
Approving filed on May 15, 2013 in the State Bar Court Clerk's Office in Los Angeles, CA.

1 c. In January 2011, Respondent collected advanced fees from two separate
2 parties for loan modification services, in violation of California Civil Code section 2944.7 and
3 California Business and Professions Code section 6106.3. Respondent was unsuccessful in
4 obtaining a loan modification acceptable to them.

5 15. In April 2011, Respondent closed his loan modification practice.

6 16. Respondent is married with two minor children.

7 17. Respondent has been involved with the Santa Monica Rotary Club for
8 eight (8) years, is on the Santa Monica YMCA board, and is a member of the Santa Monica
9 Chamber of Commerce. He participates in these organizations with his wife.

10 18. Without any mandate by a court, board, or agency, Respondent took an 8-
11 hour overview class on general real estate practices, a 3-hour class on ethics, and a 3-hour class
12 on risk management.

13 19. Respondent is presently working in an administrative capacity for a law
14 firm that he formed and then sold. At the time of hearing, he also had three (3) active real estate
15 listings, and was exploring working on development projects.

16 20. The Bureau incurred reasonable costs of investigation and enforcement in
17 the amount of \$2,307.35.

18 LEGAL CONCLUSIONS

19 1. Cause exists to discipline Respondent's real estate license under
20 California Business and Professions Code section 10177(f), because he acted and conducted
21 himself in a manner that would have warranted the denial of his application for a real estate
22 license.

23 2. Cause also exists to discipline Respondent's real estate license under
24 California Business and Professions Code section 10177(f) because he had a license issued by
25 another agency of this state or government entity for acts that, if done by a real estate licensee,
26 would be grounds for the suspension or revocation of a California real estate license.

1 3. Pursuant to California Business and Professions Code section 10177(f),
2 the Commissioner may suspend or revoke a real estate licensee if the licensee:

3 Acted or conducted himself or herself in a manner that would have
4 warranted the denial of his or her application for a real estate license, or . . .
5 had a license issued by another agency of this state, another state, or the
6 federal government revoked or suspended for acts that, if done by a real
estate licensee, would be grounds for the suspension or revocation of a
California real estate license . . .

7 4. Pursuant to California Business and Professions Code section 480(a)(3), a
8 board, such as the Bureau, may deny a license to an applicant if the applicant has "[d]one any
9 act that if done by a [Bureau] licensee . . . would be grounds for suspension or revocation of
10 license . . . [and] the crime or act is substantially related to the qualifications, functions, or
11 duties of the business or profession [of real estate]."

12 5. California Code of Regulations, title 10, section 2910(a) provides, in
13 pertinent part, that an act shall be deemed to be substantially related to the qualifications,
14 functions or duties of a real estate licensee if it involves:

15 (7) Willfully violating or failing to comply with a statutory requirement
16 that a license, permit or other entitlement be obtained from a duly
17 constituted public authority before engaging in a business or course of
conduct.

18 (8) Doing of any unlawful act with the intent of conferring a financial
19 or economic benefit upon the perpetrator or with the intent or threat of
doing substantial injury to the person or property of another.

20 (10) Conduct which demonstrates a pattern of repeated and willful
21 disregard of law.

22 6. California Business and Professions Code section 10085.6 provides that it
23 is unlawful for any licensee who offers to negotiate, arrange, or perform a mortgage loan
24 modification to charge, collect, or receive any compensation until after the licensee has fully
25 performed each and every service the licensee contracted or promised to perform.

26 ///

27 ///

1 7. Complainant has the burden of proving cause for discipline by clear and
2 convincing evidence to a reasonable certainty. *Ettinger v. Board of Med. Quality Assurance*,
3 135 Cal. App. 3d 853, 857 (1982).

4 8. Complainant has established by clear and convincing evidence that the
5 Respondent's loan modification activities would warrant the denial of an application for a real
6 estate license. By collecting advance fees for his loan modification packages, Respondent's
7 conduct was unlawful because he violated California Business and Professions Code section
8 10085.6.

9 9. These actions were substantially related to the qualifications, functions,
10 and duties of a real estate licensee for three reasons. First, Respondent failed to comply with the
11 statutory requirements to obtain a license to practice law or initiate mortgage loans in the State
12 of Washington. Second, by charging advance fees for loan modification packages, Respondent
13 engaged in an unlawful act with the intent of conferring a financial or economic benefit upon
14 himself. Finally, by collecting advance fees from at least 46 homeowners from Washington, one
15 (1) couple from Indiana, and a number of homeowners in California, Respondent demonstrated
16 a pattern of repeated disregard for the law. Regardless of whether his violation of the law was
17 unintended, his recurring conduct was willful. *Brown v. State Dept. of Health*, 86 Cal. App. 3d
18 548 (1978); *see also* California Penal Code section 7.

19 10. These activities caused the California State Bar to discipline Respondent's
20 license to practice law. The WSDFI enjoined Respondent from mortgage loan services for 10
21 years. These disciplinary actions were taken after Respondent was given an opportunity for a fair
22 notice of the charges, an opportunity for a hearing, and other due process protections comparable
23 to the California Administrative Procedure Act. The order of discipline of the Supreme Court of
24 California against Respondent is conclusive evidence of a violation of California Business and
25 Professions Code section 10177(f). The code section does not require further proof of the
26
27

underlying bad conduct; it is sufficient to show another license was revoked due to the bad conduct. *Berg v. Davi*, 130 Cal. App. 4th 223 (2005).

11. The Bureau has developed criteria for the purpose of evaluating the rehabilitation of a licensee when considering whether to revoke or suspend a license on account of a crime committed by a licensee.² California Code of Regulations, title 10, section 2911 provides, in pertinent part:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

² California Code of Regulations, title 10, section 2911 applies to denial of applications and to rehabilitation from crimes and acts. California Code of Regulations, title 10, section 2912 expressly applies to only rehabilitation from the conviction of a crime. Because Complainant seeks revocation or suspension of Respondent's license for noncriminal acts that would have caused denial of an application, and the pertinent criteria therein are substantially duplicative, both regulatory guidelines are considered for purposes of rehabilitation.

- 1 (m) New and different social and business relationships from those
2 which existed at the time of the conduct that is the basis for denial
3 of the departmental action sought.
- 4 (n) Change in attitude from that which existed at the time of the
5 conduct in question as evidenced by any or all of the following:
6 (1) Testimony of applicant.
7 (2) Evidence from family members, friends or other persons
8 familiar with applicant's previous conduct and with his
9 subsequent attitudes and behavioral patterns.

10 California Code of Regulations, title 10, section 2912 provides, in pertinent part:

- 11 (b) Restitution to any person who has suffered monetary losses
12 through "substantially related" acts or omissions of the licensee.
- 13 (g) Payment of any fine imposed in connection with the criminal
14 conviction that is the basis for revocation or suspension of the
15 license.
- 16 (h) Correction of the business practices responsible in some degree for
17 the crime or crimes of which the licensee was convicted.
- 18 (i) New and different social and business relationships from those
19 which existed at the time of the commission of the acts that led to
20 criminal conviction or convictions in question.
- 21 (j) Stability of family life and fulfillment of parental and familial
22 responsibilities subsequent to the criminal conviction.
- 23 (k) Completion of, or sustained enrollment in, formal education or
24 vocational training course for economic self-improvement.
- 25 (l) Significant and conscientious involvement in community, church[,]
26 or privately-sponsored programs designed to provide social
27 benefits or to ameliorate social problems.
- (m) Change in attitude from that which existed at the time of the
commission of the criminal acts in question as evidenced by . . . (1)
[t]estimony of applicant. . . .

12. Respondent must establish rehabilitation under California Code of
Regulations, title 10, sections 2911 and 2912. The following material facts tend to show
rehabilitation:

1 a. Respondent has paid restitution to persons who suffered monetary losses
2 through Respondent's substantially related acts.

3 b. Respondent has a stable family life with a wife and two children.
4 Respondent demonstrated a fulfillment of parental and familial responsibilities subsequent to
5 the conduct that is the basis for discipline.

6 c. Respondent has completed more than the required minimum continuing
7 education training courses for self-improvement.

8 13. Notwithstanding the above mitigating facts and circumstances, there are
9 several crucial aspects of rehabilitation that Respondent has not yet satisfied:

10 a. Less than two years have passed since Respondent was disciplined by the
11 California State Bar for wrongful acts substantially related to the qualifications, functions and
12 duties of a real estate licensee.

13 b. Respondent's law license remains under actual suspension by the State
14 Bar for unlicensed acts related to mortgages secured by real property.

15 c. Even if Respondent's suspension is lifted by the State Bar on October 19,
16 2015, he will remain under probation with the State Bar for an additional year.

17 Little weight should be given to the fact that Respondent has not committed
18 additional violations of law while still on probation. See In re Menna, 11 Cal.4th 975 and Seide
19 v. Committee of Bar Examiners, 49 Cal 3d 933.

20 14. The public would not be adequately protected by allowing Respondent to
21 continue operating as a real estate broker. Respondent's broker license was already disciplined
22 by the Bureau for failing to exercise adequate supervision, in Case No. H-37806 LA.
23 Respondent's subsequent multi-state loan modification activities caused sufficient injury to the
24 public to justify an outright suspension of for Respondent's law license for two years. A real
25 estate broker, even when operating under a restricted license, operates with little to no
26 supervision. Therefore, it would only be appropriate for Respondent to practice real estate as a
27

1 salesperson, under the close supervision of a broker who is aware of Respondent's past
2 violations.

3 ORDER

4 1. All licenses and licensing rights of Respondent Brian Rene Linnekens
5 under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson
6 license shall be issued to Respondent pursuant to California Business and Professions Code
7 section 10156.5 if Respondent makes application therefor and pays to the Bureau the
8 appropriate fee for the restricted license within 90 days from the effective date of this Decision.

9 The restricted license issued to Respondent shall be subject to all of the provisions of California
10 Business and Professions Code section 10156.7 and to the following limitations, conditions, and
11 restrictions imposed under authority of California Business and Professions Code section
12 10156.6:

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

17 b. The restricted license issued to Respondent may be suspended prior to
18 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
19 Commissioner that Respondent has violated provisions of the California Real Estate Law, the
20 Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to
21 the restricted license.

22 c. Respondent shall not be eligible to apply for the issuance of an
23 unrestricted real estate license nor for the removal of any of the conditions, limitations, or
24 restrictions of a restricted license until two years have elapsed from the effective date of this
25 Decision.

1 d. Respondent shall submit with any application for license under an
2 employing broker, or any application for transfer to a new employing broker, a statement signed
3 by the prospective employing real estate broker on a form approved by the Bureau of Real
4 Estate which shall certify: (i) that the employing broker has read the Decision of the
5 Commissioner which granted the right to a restricted license; and (ii) that the employing broker
6 will exercise close supervision over the performance by the restricted licensee relating to
7 activities for which a real estate license is required.³

8 e. Respondent shall, within nine (9) months from the effective date of this
9 Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has,
10 since the most recent issuance of an original or renewal real estate license, taken and
11 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the
12 Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition,
13 the Commissioner may order the suspension of the restricted license until the respondent
14 presents such evidence. The Commissioner shall afford Respondent the opportunity for a
15 hearing pursuant to the Administrative Procedure Act to present such evidence.

16 2. Pursuant to California Business and Professions Code section 10106,
17 Respondent is liable for costs of investigation and enforcement in the amount of \$2,307.35. All
18 licenses and licensing rights of Respondent are indefinitely suspended unless and until
19 Respondent pays the sum of \$2,307.35 for the Commissioner's reasonable cost for investigation
20 and enforcement. Said payment shall be in the form of a cashier's check made payable to the
21 Bureau of Real Estate. The investigative and enforcement costs must be delivered to the Bureau
22 of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the
23 effective date of this Decision.


24 ///

25
26
27 ³ Presently, the form approved by the Bureau of Real Estate is Restricted Salesperson Change Application, RE 214A (Rev. 1/15).

1 This Decision shall become effective at 12 o'clock noon on MAR 23 2015

2 IT IS SO ORDERED 3/2/2015.

3 REAL ESTATE COMMISSIONER

4 
5
6 Wayne S. Bell