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FILED

APR 06 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 |
| |) | 2014050250 |
| BRIAN RENE LINNEKENS, |) | |
| |) | |
| Respondent. |) | |
| |) | |

AMENDED 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 held
3 on September 15, 2014, and upon any written argument offered by Respondent and
4 Complainant.

5 On March 2, 2015, I rendered my Decision After Rejection based in part upon
6 Complainant's Argument After Rejection of Proposed Decision ("Complainant's Argument"),
7 but not Respondent's Written Argument in Support of His Continued Licensure with the Bureau
8 of Real Estate ("Respondent's Argument") due to a clerical error.

9 On or about March 11, 2015, Respondent filed Respondent's Motion for Stay and
10 Motion for Reconsideration of my Decision of March 2, 2015. Therein, Respondent provided
11 sufficient proof that he filed Respondent's Argument on or about February 13, 2015 as well as a
12 copy of Respondent's Argument.

13 On March 12, 2015, an Order Staying Effective Date was filed, and made the
14 Decision of March 2, 2015 effective on April 23, 2015.

15 I have given careful consideration to the record in this case, including, but not
16 limited to, the transcript of the proceedings of September 15, 2014. I have also considered
17 Complainant's Argument and Respondent's Argument.

18 The following shall constitute the Decision of the Real Estate Commissioner in
19 this proceeding. This Amended Decision After Rejection amends the Decision After Rejection
20 of March 2, 2015.

21 22 FINDINGS OF FACT

23 1. On May 20, 2009, the Bureau issued a real estate broker license to
24 Respondent. On November 22, 2012, Respondent's real estate broker license was suspended for
25 60 days with 30 days of the suspension stayed for 2 years subject to certain terms and conditions
26 enumerated in the Stipulation and Agreement in Bureau case no. H-37806 LA.

1 Respondent's real estate broker license is currently valid until May 19, 2017.

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

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

8 4. About the same time as when Respondent received his real estate broker
9 license, which was in May 2009, Respondent began doing business under the DBA of Home
10 Credit Law Center. The purpose of the business was to provide loan modification services to
11 distressed homeowners. He also provided bankruptcy services under Home Credit Law Center.
12 Respondent established a website offering his loan modification services to homeowners
13 throughout the United States even though he was never licensed to practice law in any other
14 jurisdiction except California.

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

18 6. Respondent reviewed SB 94 based on his own training and experience as
19 an attorney and real estate licensee, and modified his business to provide do-it-yourself loan
20 modification services. He charged advanced fees for loan modification services leading up to,
21 but not including, direct negotiations with banks. After clients paid him a fee, Respondent
22 would evaluate information provided by his clients and provide guidance. If his clients
23 requested that he directly negotiated with the banks on their behalf, he would decline, and refer
24 them to three or four loan modification companies, including Affiliated Capital Partners, which
25 was owned by Nicholas Vincent Gottuso ("Gottuso"). Respondent testified he errantly believed
26 by not directly negotiating with banks, he was not offering loan modification services under SB
27

1 94 and also not practicing law. He did not consult with any other attorney or other expert to
2 substantiate this belief.

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

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

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

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

23 11. On November 2, 2012, in connection with Bureau's investigation
24 described above in Findings of Fact, paragraph 9, a Stipulation and Agreement was filed in
25 Bureau case no. H-37806 LA. The Commissioner found grounds to discipline Respondent's
26 real estate broker license pursuant to California Business and Professions Code section 10177(h)
27

1 (failure to exercise reasonable supervision and control of the activities of salespersons and/or
2 corporation). Effective November 22, 2012, Respondent's real estate broker license was
3 suspended for sixty (60) days with thirty (30) days stayed for two (2) years pursuant to certain
4 terms and conditions and the remaining thirty (30) days stayed if Respondent paid a monetary
5 penalty of \$200 per day.

6 12. On December 20, 2012, the State Bar of California, in case nos. 12-O-
7 13466, 12-O-13947, 12-O-14331, and 12-O-15872, filed a Notice of Disciplinary Charges
8 against Respondent, State Bar license no. 206144. Respondent was given fair notice of the
9 charges, an opportunity for a hearing, and other due process protections comparable to the
10 California Administrative Procedure Act, and only upon an express finding of a violation of law
11 by the agency or entity.

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

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

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

6 b. In November 2012, despite not being licensed to practice law in the State
7 of Indiana, Respondent collected advanced legal fees for services related to loan modification
8 work from a couple in Indiana, in violation of California Rule of Professional Conduct 1-
9 300(B). Respondent did some preliminary work to obtain a loan modification, but was unable
10 to secure a loan modification for the couple.

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

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

16 16. Respondent is married with two minor children.

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

20 18. Adrienne Barr, who is a real estate broker, and Brian Grossman, who is
21 an attorney, testified as character witnesses for Respondent. They testified to his integrity and
22 honesty.

23 19. Without any mandate by a court, board, or agency, Respondent took an 8-
24 hour overview class on general real estate practices, a 3-hour class on ethics, and a 3-hour class
25 on risk management.

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

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

LEGAL CONCLUSIONS

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

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

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

Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or . . . had a license issued by another agency of this state, another state, or the 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 . . .

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

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

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

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

11 (10) Conduct which demonstrates a pattern of repeated and willful
12 disregard of law.

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

17 7. Complainant has the burden of proving cause for discipline by clear and
18 convincing evidence to a reasonable certainty. *Ettinger v. Board of Med. Quality Assurance*,
19 135 Cal. App. 3d 853, 857 (1982).

20 8. Complainant has established by clear and convincing evidence that the
21 Respondent's loan modification activities would warrant the denial of an application for a real
22 estate license. By collecting advance fees for his loan modification packages, Respondent's
23 conduct was unlawful because he violated California Business and Professions Code section
24 10085.6.

25 9. These actions were substantially related to the qualifications, functions,
26 and duties of a real estate licensee for three reasons. First, Respondent failed to comply with the
27 statutory requirements to obtain a license to practice law or initiate mortgage loans in the State
28 of Washington. Second, by charging advance fees for loan modification packages, Respondent
29 engaged in an unlawful act with the intent of conferring a financial or economic benefit upon

1 himself. Finally, by collecting advance fees from at least 46 homeowners from Washington, one
2 (1) couple from Indiana, and a number of homeowners in California, Respondent demonstrated
3 a pattern of repeated disregard for the law. Regardless of whether his violation of the law was
4 unintended, his recurring conduct was willful. *Brown v. State Dept. of Health*, 86 Cal. App. 3d
5 548 (1978); *see also* California Penal Code section 7.

6 10. These activities caused the California State Bar to discipline Respondent's
7 license to practice law. The WSDFI enjoined Respondent from mortgage loan services for 10
8 years. These disciplinary actions were taken after Respondent was given an opportunity for a fair
9 notice of the charges, an opportunity for a hearing, and other due process protections comparable
10 to the California Administrative Procedure Act. The order of discipline of the Supreme Court of
11 California against Respondent is conclusive evidence of a violation of California Business and
12 Professions Code section 10177(f). The code section does not require further proof of the
13 underlying bad conduct; it is sufficient to show another license was revoked due to the bad
14 conduct. *Berg v. Davi*, 130 Cal. App. 4th 223 (2005).

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

- 19 (a) The passage of not less than two years since the most recent
20 criminal conviction or act of the applicant that is a basis to deny
21 the departmental action sought. (A longer period will be required
22 if there is a history of acts or conduct substantially related to the
23 qualifications, functions or duties of a licensee of the department.)
24 (b) Restitution to any person who has suffered monetary losses
25 through "substantially related" acts or omissions of the applicant.

26 ² California Code of Regulations, title 10, section 2911 applies to denial of applications and to rehabilitation from
27 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 (g) Payment of the fine or other monetary penalty imposed in
connection with a criminal conviction or quasi-criminal judgment.
- 2 (h) Stability of family life and fulfillment of parental and familial
3 responsibilities subsequent to the conviction or conduct that is the
basis for denial of the agency action sought.
- 4 (i) Completion of, or sustained enrollment in, formal education or
vocational training courses for economic self-improvement.
- 5 (j) Discharge of, or bona fide efforts toward discharging, adjudicated
debts or monetary obligations to others.
- 6 (k) Correction of business practices resulting in injury to others or with
the potential to cause such injury.
- 7 (l) Significant or conscientious involvement in community, church or
8 privately-sponsored programs designed to provide social benefits
or to ameliorate social problems.
- 9 (m) New and different social and business relationships from those
which existed at the time of the conduct that is the basis for denial
10 of the departmental action sought.
- 11 (n) Change in attitude from that which existed at the time of the
conduct in question as evidenced by any or all of the following:
- 12 (1) Testimony of applicant.
- 13 (2) Evidence from family members, friends or other persons
familiar with applicant's previous conduct and with his
14 subsequent attitudes and behavioral patterns.

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

- 16 (b) Restitution to any person who has suffered monetary losses
17 through "substantially related" acts or omissions of the licensee.
- 18 (g) Payment of any fine imposed in connection with the criminal
conviction that is the basis for revocation or suspension of the
19 license.
- 20 (h) Correction of the business practices responsible in some degree for
the crime or crimes of which the licensee was convicted.
- 21 (i) New and different social and business relationships from those
22 which existed at the time of the commission of the acts that led to
criminal conviction or convictions in question.
- 23 (j) Stability of family life and fulfillment of parental and familial
responsibilities subsequent to the criminal conviction.
- 24 (k) Completion of, or sustained enrollment in, formal education or
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
benefits or to ameliorate social problems.
- 27

- 1 (m) Change in attitude from that which existed at the time of the
2 commission of the criminal acts in question as evidenced by . . . (1)
3 [t]estimony of applicant. . . .

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

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

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

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

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

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

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

21 c. Even if Respondent's suspension is lifted by the State Bar on October 19,
22 2015, he will remain under probation with the State Bar for an additional year. Little weight
23 should be given to the fact that Respondent has not committed additional violations of law while
24 still on probation. *In re Menna*, 11 Cal. 4th 975 (1995); *Seide v. Committee of Bar Examiners*,
25 49 Cal. 3d 933 (1989).

26 14. The public would not be adequately protected by allowing Respondent to
27 continue operating as a real estate broker. Respondent's broker license was already disciplined

1 by the Bureau for Respondent failing to exercise adequate supervision, in Bureau Case No. H-
2 37806 LA. Respondent's subsequent multi-state loan modification activities caused sufficient
3 injury to the public to justify an outright suspension of Respondent's State Bar law license for
4 two (2) years. A real estate broker, even when operating under a restricted license, operates
5 with little to no supervision. Therefore, it would only be appropriate for Respondent to practice
6 real estate as a salesperson under the close supervision of a broker who is aware of
7 Respondent's past.

8
9 ORDER

10 1. All licenses and licensing rights of Respondent Brian Rene Linnekens
11 under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson
12 license shall be issued to Respondent pursuant to California Business and Professions Code
13 section 10156.5 if Respondent makes application therefor and pays to the Bureau the
14 appropriate fee for the restricted license within 90 days from the effective date of this Decision.
15 The restricted license issued to Respondent shall be subject to all of the provisions of California
16 Business and Professions Code section 10156.7 and to the following limitations, conditions, and
17 restrictions imposed under authority of California Business and Professions Code section
18 10156.6:

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

23 b. The restricted license issued to Respondent may be suspended prior to
24 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner
25 that Respondent has violated provisions of the California Real Estate Law, the Subdivided
26
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1 Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to the
2 restricted license.

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

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

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

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

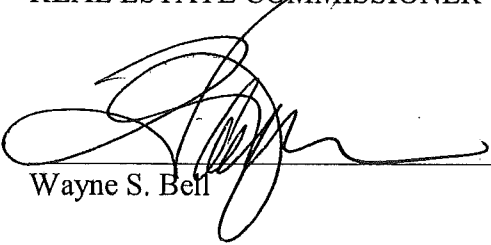
1 2. Pursuant to California Business and Professions Code section 10106,
2 Respondent is liable for costs of investigation and enforcement in the amount of \$2,307.35. All
3 licenses and licensing rights of Respondent are indefinitely suspended unless and until
4 Respondent pays the sum of \$2,307.35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

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

10 APR 27, 2015.

11 IT IS SO ORDERED March 26, 2015.

12
13 REAL ESTATE COMMISSIONER

14
15 
16 Wayne S. Bell