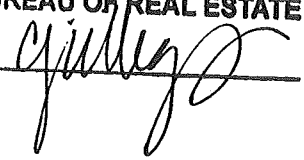


FILED

FEB - 3 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

LISA KATHLEEN KOLAR,

Respondent.

) CalBRE No. H-39445 LA

) OAH No. 2014060222

DECISION

The Proposed Decision dated December 19, 2014 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.

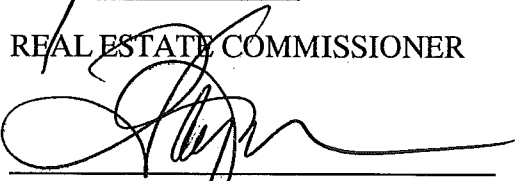
The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

FEB 23 2015

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

IT IS SO ORDERED

1/23/2015
REAL ESTATE COMMISSIONER


WAYNE S. BELL

BEFORE THE
THE BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation of:

LISA KATHLEEN KOLAR,

Respondent.

Case No. H-39445-LA

OAH No. 2014060222

PROPOSED DECISION

This matter came on regularly for hearing before Matthew Goldsby, Administrative Law Judge, on December 15, 2014, at the Office of Administrative Hearings in Los Angeles, California.¹

Lisette Garcia, Counsel, appeared and represented Veronica Kilpatrick (the complainant), Deputy Real Estate Commissioner (Commissioner) of the Bureau of Real Estate, Department of Consumer Affairs (the Bureau).

Robert Dyess, Esq., appeared and represented Lisa Kathleen Kolar (the respondent), who was also present.

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

FACTUAL FINDINGS

1. Acting in her official capacity, the complainant filed the Accusation against the respondent. The respondent timely submitted a Notice of Defense, which contained a request for a hearing.

¹ This case was consolidated for hearing with the *Matter of the Notice of Intention to Issue Bar Order against Susan Marie Small*, Case No. H-39462-LA (OAH No. 2014060684) and the *Matter of the Order to Desist and Refrain against Susan Marie Small*, Case No. H-04639-SD (OAH No. 2014060687.) The latter case was dismissed pursuant to the withdrawal of the respondent in the case. A separate Proposed Decision is being issued in the remaining two consolidated cases because the pleadings are different in the respective cases.

2. On December 9, 1983, the Bureau issued to the respondent salesperson license number 00857621. On March 25, 1998, the Bureau issued a broker license to the respondent. The respondent has no record of discipline by the Bureau, except for a conditional suspension under Business and Professions Code section 10153.4 (continuing education requirements) on September 29, 1994. The respondent's broker license is valid and will expire on March 24, 2018, unless renewed.

3. The respondent is not licensed to do business under any fictitious business name. Since June 30, 1998, the respondent has been a licensed officer of L'Abri Management, Inc., a California corporation. The respondent and her husband manage the company as a full-service property management firm.

4. In the fall of 2011, the respondent was approached Susan Marie Small (the unlicensed party), a friend from Bible study class. The unlicensed party had developed a business under the fictitious name Su Small Home Services by which she solicited listings of places to rent, negotiated rental agreements, and collected rents for compensation. The unlicensed party was advised by an attorney that she should associate with a broker to continue her real estate activities. The respondent was willing to help her friend and agreed to form an association. The aim was to help her friend comply with the law until she obtained her own license. The respondent had no expectation of any financial return from her friend's business and she did not want to intervene in her friend's business. Neither the respondent nor the unlicensed party inquired with the Bureau as to whether their intended association was in compliance with the law.

5. On November 16, 2011, the respondent filed a Fictitious Business Name Statement with the Riverside County Clerk's Office as instrument number I-2011-03128. The statement declared that the respondent and the unlicensed party intended, but had not yet begun, to do business as co-partners under the fictitious business name Behind the Scenes Management Services.

6. On January 3, 2012, the respondent filed a second Fictitious Business Name Statement with the Riverside County Clerk's office as instrument number I-2012-0007. The statement reasserted that the respondent and the unlicensed party intended, but had not yet begun, to do business as co-partners under the fictitious business name Behind the Scenes Management Services.

7. On May 20, 2012, in Case No. H-38155-LA, the Bureau issued an Order to Desist and Refrain against the unlicensed party for doing business in violation of Business and Professions Code section 10130. The order was not expressly directed to the unlicensed party doing business as Behind the Scenes Management Services. The order directed the unlicensed party to cease all activities for which a real estate broker license is required, unless and until she obtained a license. The order was not served on the respondent.

8. On June 14, 2012, the respondent filed a Broker Change Application with the Bureau to add the fictitious business name Behind the Scenes Management Services to her

license. The respondent submitted a conformed copy of the most recent Fictitious Business Name Statement along with her application.

9. On June 21, 2012, the respondent and the unlicensed party executed a partnership agreement for the business Behind the Scenes Management Services. The agreement provided that the unlicensed party would contribute all capital and receive 95 percent of profits and losses. The agreement made no provision for the respondent's responsibilities or duties as a broker.

10. On June 28, 2012, the complainant served the unlicensed party with a copy of the Order to Desist and Refrain.

11. On the same date, June 28, 2012, the Bureau sent the respondent a letter rejecting her application to add the fictitious name to her license because the respondent intended to do business in partnership, rather than as an individual. The Bureau instructed the respondent to refile as an individual doing business under the fictitious name if she desired to effectuate the change to her license. The respondent testified that she completed forms to make the desired change, but no evidence was presented to show that the respondent filed any Fictitious Business Name Statement or Broker Change Application to do business as an individual under the name Behind the Scenes Management Services. Accordingly, the testimony is disbelieved as unreliable.

12. The unlicensed party developed a website under the domain name Behind the Scenes Property Management. The site listed properties for lease on short-term and long-term rentals. The respondent was unaware of the website and the unlicensed party did not seek the respondent's approval of the site's content.

13. Margaret G² owns a condominium unit (the condo) in a gated community in Rancho Mirage, California. On November 13, 2012, Margaret G retained the unlicensed party to act as the property manager of the condo. The unlicensed party and Margaret G executed a written Rental Property Management Agreement, whereby Margaret G agreed to pay the unlicensed party a percentage of the rents collected as compensation for services rendered. The unlicensed party was granted the power to advertise the property for rent. The respondent was unaware of the agreement and did not supervise the transaction. The unlicensed party did not seek the respondent's approval of the agreement.

14. The unlicensed party listed the condo on her website as a rental property. On December 8, 2012, a couple in Canada entered a periodic tenancy agreement with the unlicensed party for a one month rental of the condo. The respondent signed the agreement as the general partner of Behind the Scenes Management Services.

15. A dispute arose between the unlicensed party and Margaret G about the costs to market the condo. The unlicensed party deducted payment in the amount of \$400 to

² The consumer's name is withheld to protect her privacy.

photograph and post pictures of the condo on her website. Margaret G believed that those services were included in the compensation paid under the agreement.

16. On February 14, 2013, the unlicensed party refunded Margaret G the sum of \$200 as a proposed resolution of the dispute. The respondent was unaware of the dispute and did not supervise the correspondence. The unlicensed party did not seek the respondent's approval of the proposed resolution.

17. On March 30, 2013, the unlicensed party sent the respondent a check in the sum of \$653 along with an IRS Form Schedule K-1 reporting the amount as her 5% share of profits.

18. Margaret G has been licensed by the Bureau for 30 years and became suspicious of the unlicensed party's business activities. She began to investigate with the assistance of a neighbor who was able to make internet searches. Margaret G discovered that the unlicensed party was not licensed by the Bureau. Although the respondent's license was valid and in good standing, Margaret G never observed the respondent's involvement in any decisions.

19. On June 17, 2013, Margaret G attempted to reach the respondent by telephone. She left a message with the respondent's husband. Before the respondent replied, Margaret G filed a complaint with the Bureau about the property management services rendered by Behind the Scenes Management Services. After returning the call, the respondent discovered the basis of the complaint. The respondent contacted the unlicensed party and directed her to apply for her license without further delay.

20. The unlicensed party failed to respond to a Bureau investigator's inquiry during the investigation regarding Margaret G's complaint.

21. On September 6, 2013, the unlicensed party enrolled in a real estate school to take the courses necessary to apply for licensure.

22. On September 13, 2013, the investigator interviewed Margaret G. In October 2013, the investigator contacted the respondent and requested documents and information. Thereafter, the respondent notified the unlicensed party to terminate their association and the partnership was dissolved.

23. On November 22, 2013, the respondent furnished the investigator with the information available to her. The respondent possessed no records relating to any transactions involving Behind the Scenes Management Services.

24. On December 3, 2013, the investigator interviewed the unlicensed party. The unlicensed party refused to furnish requested documentation relating to Behind the Scenes Management Services.

25. On the same date, December 3, 2013, the unlicensed party completed her real estate training program.

26. On April 15, 2014, the unlicensed party passed the real estate salesperson license examination. The Bureau mailed the unlicensed party an application for licensure and the unlicensed party completed and filed the application. By the date of the hearing in the instant matter, no license had been issued on the application.

27. As of May 1, 2014, the unlicensed party's website posted listings for long-term rentals.

28. On May 13, 2014, the Bureau issued another Order to Desist and Refrain against the unlicensed party. This order included the business names Behind the Scenes Property Management and Behind the Scenes Management Services.

29. The complainant incurred reasonable costs in the amount of \$2,521 in its investigation of the respondent's case. The complainant incurred reasonable costs in the amount of \$1,802.25 in its enforcement of the consolidated cases. The total amount of reasonable investigation and enforcement costs is \$4,323.25.

LEGAL CONCLUSIONS

1. Cause exists to discipline the respondent's license under Business and Professions Code section 10177, subdivisions (d) and (g), because the respondent willfully disregarded and violated Business and Professions Code sections 10130, 10131.01, subdivision (b), 10137 and 10159.5 and demonstrated negligence in performing an act for which she is required to hold a license. (Factual Findings, 1-28.)

2. Cause exists to award the complainant costs of investigation and enforcement under Business and Professions Code section 10106, subdivision (b). (Factual Finding, 29).

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

4. 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. (Bus. & Prof. Code, § 10130.)

5. Business and Professions Code section 10131.01, subdivision (b), provides that a broker shall exercise reasonable supervision and control over the activities of any nonlicensed person³ performing the following functions:

³ Specifically, the statute applies to an employee of a property management firm retained to manage a residential apartment building or complex or court and who is

- (A) Showing rental units and common areas to prospective tenants.
- (B) Providing or accepting preprinted rental applications, or responding to inquiries from a prospective tenant concerning the completion of the application.
- (C) Accepting deposits or fees for credit checks or administrative costs and accepting security deposits and rents.
- (D) Providing information about rental rates and other terms and provisions of a lease or rental agreement, as set out in a schedule provided by an employer.
- (E) Accepting signed leases and rental agreements from prospective tenants.

6. It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of the real estate law who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him or her. (Bus. & Prof. Code, § 10137)

7. Every person applying for a license under the Real Estate Law who desires to have such license issued under a fictitious business name shall file with his application a certified copy of his fictitious business name statement filed with the county clerk. (Bus. & Prof. Code, § 10159.5)

8. In this case, the respondent associated with an unlicensed party motivated by a single subjective aim: to help a friend engage in activities for which a license is required without first obtaining a license. The objective economic reality of the association was devoid of any genuine business relationship. The association was a partnership in form only, but neither the respondent nor the unlicensed party had a good faith belief that the association was a genuine business partnership in substance. The respondent provided no supervision of marketing activities or contractual transactions. The unlicensed party did not seek the respondent's approval of marketing activities or contractual transactions, except as to the one agreement with the Canadian couple. In the absence of knowledge regarding the issue, the respondent's failure to inquire with the Bureau as to whether their intended association was in compliance with the law was negligent and careless.

9. Although cause exists to discipline the respondent's license, mitigating factors are taken into account to evaluate the level of discipline. The respondent has a 31-year history of licensure without discipline, except one conditional suspension relating to continuing education compliance 20 years ago. Other than a dispute over \$200 in marketing costs charged to Margaret G, no actual harm was caused to the public. Accordingly, revocation of the respondent's license would be unduly harsh discipline and a properly-

performing under the supervision and control of a broker of record who is an employee of that property management firm or a salesperson licensed to the broker who meets certain minimum requirements as specified in a regulation issued by the commissioner.

conditioned probationary period should suffice to protect the public health, safety and welfare.

10. Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, the administrative law judge may direct a licensee found to have committed a violation of the Real Estate Law to pay the reasonable costs of the investigation and enforcement of the case.

11. In this case, it was established that the Bureau incurred reasonable costs in the investigation and prosecution of this matter in the amount of \$4,323.25, to be paid by the respondent within 90 days of the effective date of this Decision.

ORDER

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

2. The restricted license issued to the respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that the 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. The 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 two years have elapsed from the effective date of this Decision.

4. The respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that the 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 the respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford the respondent the

opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. The respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the department including the payment of the appropriate examination fee. If the respondent fails to satisfy this condition, the Commissioner may order suspension of the respondent's license until the respondent passes the examination.

6. Costs are allowed to the Bureau in the amount of \$4,323.25 and ordered paid by the respondent within 90 days of the effective date of this Decision.

DATED: December 19, 2014


MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings