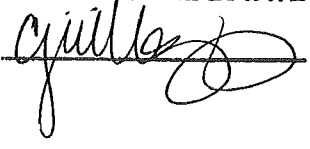


FILED

APR - 1 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of

BONAVENTURE UGOCHUKWU

UGONWA,

Respondent.

) CalBRE No. H-39550 LA

) OAH No. 2014080276

DECISION

The Proposed Decision dated March 2, 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.

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.

This Decision shall become effective at 12 o'clock noon on APR 21 2015.

IT IS SO ORDERED 3/24/2015.

REAL ESTATE COMMISSIONER


WAYNE S. BELL

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

In the Matter of the Accusation of:

**BONAVENTURE UGOCHUKWU
UGONWA,**

Respondent.

Case No. H-39550 LA

OAH No. 2014080276

PROPOSED DECISION

This matter came on regularly for hearing before Matthew Goldsby, Administrative Law Judge, on February 17, 2015, at the Office of Administrative Hearings in Los Angeles, California.

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

Stephen J. Geller, Esq., appeared and represented Bonaventure Ugochukwu Ugonwa (the respondent), who was present.

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

FACTUAL FINDINGS

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

2. On October 23, 2007, the Bureau issued real estate salesperson license number B/01833630 to the respondent. On August 30, 2011, the Bureau issued a real estate broker license to the respondent.¹ The respondent's license is valid and will expire on August 29, 2015, unless renewed.

¹ During the time the respondent received the two licenses, the Bureau was known as the Department of Real Estate.

3. On October 5, 2007, the Director of the Office of Real Estate Appraisals (OREA) issued real estate appraiser license number AL 040-6852 to the respondent.

4. On November 18, 2011, the OREA commenced disciplinary proceedings against the respondent based on an incident occurring on August 25, 2010. The respondent was retained by the owner of a single-family residence located at 44028 Calston Avenue in Lancaster, California (the Lancaster Property). For the sum of \$300, the respondent agreed to render an appraisal report for the Lancaster Property to be used in pending bankruptcy proceedings.

5. At the time, the respondent's real estate appraiser license was expired and its renewal was delayed while the OREA investigated criminal charges of domestic abuse against the respondent. The misdemeanor criminal case against the respondent was ultimately dismissed and his license was renewed. However, when the time came to issue his appraisal report for the Lancaster Property, the respondent's license status was pending.

6. Previously, the respondent worked under the supervision of certified residential real estate appraiser Hamayoun Kiani (Kiani). For two years, the respondent performed appraisal services at Kiani's direction. The respondent prepared written appraisal reports and submitted them to Kiani for review and approval. With the respondent's prior approval, Kiani scanned the respondent signature into the software that generated the appraisal report. If the appraisal reports met with Kiani's approval, Kiani would sign the appraisal report as the supervising appraiser and digitally sign the respondent's name to the report as the trainee. Fees generated by these appraisal transactions were divided equally between Kiani, as the supervisor, and the respondent, as the trainee.

7. Effective August 27, 2012, the OREA issued its decision against Kiani and four other trainees who worked under the supervision of Kiani in the same manner as described in paragraph 6. The OREA found that Kiani inadequately supervised his trainees and denied Kiani's application for a certified general real estate appraiser license and revoked his residential real estate appraiser license. The OREA stayed the revocation for three years and issued a probationary license, subject to terms and conditions. Kiani remains on probation with OREA until August 2015.

8. The respondent hired James Johnson (Johnson) to help market the respondent's business. He paid Johnson \$500 per month for his services. The respondent was hired by the homeowner of the Lancaster Property as a direct result of Johnson's services.

9. With respect to the Lancaster Property, the respondent issued an appraisal report, but issued the report solely under the name and signature of Kiani. Kiani was unaware that the report was issued under his name and signature. Kiani never reviewed or endorsed the report. Kiani was not paid any portion of the fee collected from the homeowner. Kiani discovered that his name and signature had been used on the appraisal report through the homeowner's bankruptcy attorney.

10. Kiani filed a complaint against the respondent with the OREA. Based on Kiani's complaint, the OREA filed an accusation against the respondent on multiple causes for discipline, including the filing of a misleading and inaccurate appraisal report, dishonesty, fraud or deceit. The respondent filed a notice of defense and requested a hearing.

11. The respondent retained attorney Joseph Young to represent him at the hearing. On September 11, 2012, the matter of the OREA accusation against the respondent came on regularly for hearing at the Office of Administrative Hearings in Los Angeles, California. The respondent was present at the hearing, but his attorney never appeared. The respondent requested a continuance to retain counsel, but the motion was denied. The respondent proceeded with the hearing, unrepresented by counsel on the first day of trial.

12. The next day, September 12, 2012, attorney Sam Zisselman appeared at the hearing and represented the respondent. This attorney was unfamiliar with the case and unprepared. Oral and documentary evidence was received and the administrative law judge took the matter under submission.

13. On January 28, 2013, the administrative law judge issued her proposed decision revoking the respondent's real estate appraiser license. Based on her findings of fact, the administrative law judge made the following legal conclusion:

"Respondent's fraud and dishonesty throughout the handling of the appraisal of the subject property has demonstrated by clear and convincing evidence that he cannot be trusted to comply with the minimum standards of professional appraisal practice. Respondent lacks the qualifications of honesty, candor, integrity and trustworthiness that are necessary to the practice of real estate appraisal."

Effective March 20, 2013, the OREA adopted the proposed decision and the respondent's real estate appraiser license was revoked.

14. On June 2, 2014, the respondent filed a petition for reinstatement. The petition was rejected because it was not submitted with the required initial application forms, fees and supporting documentation.

15. The respondent did not report to the Bureau that his license had been revoked by the OREA. He did not know that he was required to make the disclosure of discipline by other agencies. The Bureau discovered the disciplinary action through independent sources of information. On July 24, 2014, the Bureau filed its accusation against the respondent.

16. The next day, on July 25, 2014, the respondent filed an initial application with the OREA for a residential appraiser license. The application was deficient with respect to proof of successful completion of required basic education courses. On January 13, 2015, the respondent completed the required appraisal courses and submitted certificates of completion with OREA. The application remains pending.

17. At the hearing on the accusation, the respondent presented evidence to show that he did not engage in fraud or dishonesty as a real estate appraiser. He testified that he prepared the appraisal report for the Lancaster Property using templates previously furnished by Kiani and that those templates already bore Kiani's signature. He further testified that he gave the appraisal report to Johnson to deliver to Kiani for his approval. This testimony contradicts facts acknowledged by the respondent. Kiani was not paid any portion of the fee and the report was issued solely under Kiani's name, not as a supervising appraiser for respondent as a trainee. These facts tend to show that the transaction was never intended to be jointly administered. Moreover, Kiani testified that he signed appraisal reports only after reviewing them and that he did not know Johnson. The credibility of both the respondent and Kiani is made tenuous by the nature of the disciplinary actions against them. More significantly, an administrative law judge has already adjudicated that the respondent engaged in fraud and dishonesty.² The respondent took no action to appeal the decision of the OREA and the decision is now final and binding. Accordingly, the conflict in the evidence as to these factual issues need not be resolved because the issues were previously adjudicated.

18. The respondent has completed correspondence coursework and final examination for a residential sales comparison and income approach course, a residential appraiser site valuation and cost approach course, and a residential appraiser market analysis and highest and best use course. The respondent has bought and sold properties on his own account as well as in his capacity as a broker for other parties. The respondent has been involved in 20 transactions. He has no record of prior discipline with the Bureau.

19. The complainant incurred reasonable costs in the amount of \$2,037.65 in its investigation and enforcement of the case.

LEGAL CONCLUSIONS

1. Cause exists to discipline the respondent's license under Business and Professions Code section 10177, subdivision (f), because the Board of Real Estate Appraisers disciplined the respondent for acts that, if done by a real estate licensee, would be grounds for discipline of a California real estate license. (Factual Findings, paragraphs 3, 4, 7, 9, 13; Legal Conclusions, paragraphs 4 and 5 and 7 through 10.)

2. Cause exists to discipline Respondent's license under Business and Professions Code sections 10186.2 because he failed to report disciplinary action taken by the Board of Real Estate Appraisers, another licensing entity. (Factual Findings, paragraphs 13, 14, 15; Legal Conclusions, paragraphs 6 and 7 through 10.)

² Collateral estoppel (issue preclusion) and res judicata (claim preclusion) are applicable to decisions rendered in administrative cases. (*People v. Garcia* (2006) 39 Cal.4th 1070.)

3. Cause exists to award the complainant costs of investigation and enforcement in the amount of \$2,037.65 pursuant to Business and Professions Code section 10106. (Factual Findings, paragraph 19; Legal Conclusions, paragraphs 11 and 12.)

4. Pursuant to Business & Professions Code Section 10177, subdivision (f), the commissioner may discipline the license of a real estate licensee who has had a license issued by another agency disciplined for acts that, if done by a real estate licensee, would be grounds for discipline of a California real estate license.

5. Section 10177(f) does not always require proof of the underlying bad conduct; it is sufficient to show another license was revoked due to the bad conduct. (*Berg v. Davi* (2005) 130 Cal.App.4th 223.)

6. Business and Professions Code section 10186.2, subdivision (a)(1)(C), requires a licensee to report any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government within 30 days.

7. In this case, the respondent's real estate appraiser license was revoked by the OREA. Even without proof of the underlying bad conduct, this disciplinary action by another agency is grounds for discipline by the Bureau. Moreover, the respondent's failure to report the discipline imposed by the OREA was grounds for discipline by the Bureau, notwithstanding his ignorance of his reporting duties.

8. The level of discipline takes into account both mitigating and aggravating facts and circumstances. In mitigation, the respondent has taken coursework relating to his application for the reinstatement of his appraiser license. Although not directly related to his real estate broker license, the evidence shows a commitment to self-improvement and general education. In addition, the respondent was previously represented by an attorney who failed to appear at an evidentiary hearing in which adverse findings were made against the respondent.

9. Notwithstanding these facts in mitigation, the respondent has engaged in conduct contrary to the duties and responsibilities of a real estate broker. The respondent engaged in acts as a real estate appraiser which involved fraud and dishonesty. These traits are antithetical to the proper performance of a real estate broker. The respondent's failure to report the revocation of his appraiser license in March 2013 was, at best, careless and reckless; a dutiful broker reasonably should have known of his reporting obligations.

10. The weight of all the evidence tends to exhibit a pattern of willful misrepresentations and omissions. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. (*Golde v. Fox* (1979) 98 Cal.App.3d 167.) Accordingly, the respondent's license must be revoked in order to protect the safety and welfare of the public.

11. Business and Professions Code section 10106 provides, in part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, the Real Estate

Commissioner may request the administrative law judge to direct a licensee found to have violated the Real Estate Law to pay the reasonable costs of the investigation and enforcement of the action.

12. The complainant has presented satisfactory proof that reasonable costs were incurred in the amount of \$2,037.65 to investigate and enforce the case against the respondent. Accordingly, the respondent is liable under Business and Professions Code section 10106 for costs in the amount of \$2,037.65, payable within 90 days of the effective date of this decision.

ORDER

1. Real estate broker license number B/01833630 issued to the respondent is
revoked.

2. The respondent shall pay costs to the Bureau in the amount of \$2,037.65
within 90 days of the effective date of this Decision.

DATED: March 2, 2015


MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings