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FILED

AUG 12 2015

BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

CLAUDIA MIREYA HERNANDEZ and
YADIRA JANNET GUERRERO,

Respondents.

No. H-39671 LA

AMENDED

ORDER STAYING EFFECTIVE DATE

On July 16, 2015, a Decision was rendered by the Bureau of Real Estate to become effective August 13, 2015.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for an additional period of 30 days to allow time for review of Respondent's petition for reconsideration.

The Decision shall become effective at 12 o'clock noon on September 14, 2015.

IT IS SO ORDERED AUGUST 12, 2015

WAYNE S. BELL
Real Estate Commissioner

By: *[Handwritten signature]*
JEFFREY MASON
Chief Deputy Commissioner

FILED

AUG 11 2015

BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of

No. H-39671 LA
OAH 2015020932

CLAUDIA MIREYA HERNANDEZ
and YADIRA JANNET GUERRERO,

Respondents.

ORDER STAYING EFFECTIVE DATE

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IT IS SO ORDERED AUGUST 11, 2015

WAYNE S. BELL
Real Estate Commissioner

By:


PHILLIP IHDE
Regional Manager

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FILED

JUL 23 2015

BEFORE THE BUREAU OF REAL ESTATE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

By John Guile

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| In the Matter of the Accusation of: |) | CalBRE No. H-39671 LA |
| |) | |
| CLAUDIA MIREYA HERNANDEZ |) | OAH No. 2015020932 |
| |) | |
| YADIRA JANNET GUERRERO |) | |
| |) | |
| <hr/> | | |
| Respondents | | |

DECISION

The Proposed Decision dated June 24, 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.

Pursuant to Section 11517 (c) (2) of the Government Code, the following correction is made:

Caption of the Accusation Against: Page 1, line 2 : "Yakira" shall read: "Yadira".

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 AUG 13 2015.

IT IS SO ORDERED 7/16/2015

REAL ESTATE COMMISSIONER

Wayne Bell
WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CLAUDIA MIREYA HERNANDEZ and
YAKIRA JANNET GUERRERO,

Respondents.

Case No. H-39671 LA

OAH No. 2015020932

PROPOSED DECISION

Irina Tentser, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on May 26, 2015, at Los Angeles, California.

James R. Peel, Counsel, represented Deputy Real Estate Commissioner Maria Suarez (Complainant) of the Bureau of Real Estate (Bureau).

Claudia Mireya Hernandez (Respondent Hernandez) and Yadira Jannet Guerrero (Respondent Guerrero), (hereafter collectively referred to as "Respondents") appeared and represented themselves.

Oral and documentary evidence was received. The record was left open until June 5, 2015, for Complainant to submit Respondents' most recent real estate salespersons license history certifications. Complainant timely submitted copies of real estate salespersons license history certifications dated May 28, 2015 for Respondent Hernandez and Respondent Guerrero. Complainant's additional evidence was collectively marked for identification as Exhibit 13. No objection was received from Respondents to Complainant's additional evidence. Accordingly, Exhibit 13 was admitted into evidence. The record was closed and the matter was submitted for decision on June 5, 2015.

FACTUAL FINDINGS

1. Maria Suarez made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. a. Respondents are presently licensed under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code¹ as real estate salespersons.

b. Respondent Hernandez has been licensed as a real estate salesperson since September 26, 2003. Her real estate salesperson's license is number 01381811, and is scheduled to expire on November 7, 2015.

c. Respondent Guerrero has been licensed as a real estate salesperson since October 1, 2010. Her real estate salesperson license is number 01852421, and is scheduled to expire on September 30, 2018.

3. At all relevant times herein, Respondents engaged in the business of, acted in the capacity of, advertised and/or acted as real estate salespersons in the State of California.

4. Respondents and S.P.² were long-time friends. In 2011, Respondents solicited S.P. to be a partial owner in a rental property located at 569 Summit Blvd., Unit 3, Big Bear Lake, California (the property).

5. Respondents misrepresented to S.P. that they were the owners of the property. In actuality, ownership of the property had been transferred by a grant deed from Orange County Realty, Inc., a company partially owned by Respondent Hernandez that also employs Respondent Guerrero as a real estate salesperson, to Respondents' brother, John Guerrero, on July 2, 2010. (Ex. 5.)

6. a. Despite the fact that Respondents were aware that they were not the legal owners of the property, they did not disclose that fact to S.P. Instead, during the course of the transaction, Respondents informed S.P. that they owned the property and that she needed to pay \$12,000 to Respondents for purchase equity to become a third partner with title to then be divided three ways in the form of joint ownership. (Ex. 6.)

b. Respondents' actions in misrepresenting the ownership of the property to S.P. during the course of their transaction constitutes dishonest dealing.

7. Based on the parties' agreement, S.P. thereafter made monthly payments of \$500 to Respondents totaling \$8,000. In March 2012, Respondents referred S.P. to G.P. in order to apply for a loan on the property. S.P. filled out the loan documents and forwarded them to Respondent Guerrero as instructed by Respondents. G.P. subsequently notified S.P. that she was not approved for a \$150,000 loan by herself on the property based on her income.

¹ All further statutory references are to the Business and Professions Code unless otherwise indicated.

² Initials are used in lieu of the full name to protect the privacy of the witness.

8. S.P. was confused why she was being asked to single-handedly carry the loan on the property by Respondents. She began to further doubt the transaction with Respondents after she was told by Respondents that she should continue to pay \$500 a month for an additional year in order to decrease the total existing property loan balance and then re-apply to be the only one on the loan. S.P.'s understanding of their agreement was that she and Respondents would share a third of the loan and a third of the equity in the property based on Respondents' previous representations.

9. After a series of communications between Respondents and S.P. between April and June, 2012, S.P. discovered that Respondents did not own the property and that the property was actually owned by John Guerrero. Respondents further informed S.P. around that time that the loan was in the name of Respondents' uncle, Luis Martinez. Further, Respondents revealed to S.P. that they could not be loan signers for the property because their respective credit ratings had been negatively affected by short sales.

10. Between May and June 2012, S.P. discovered, through her independent investigation and conversations with Respondents, the true facts of the property's ownership and Respondents' expectations that she be the only loan signer. As a result of Respondents' misrepresentations to her about the property's ownership, S.P. began to demand that Respondents return the \$8,000 paid by her to Respondents.

11. Respondents initially refused to return the \$8,000 paid to them by S.P. towards the \$12,000 ownership interest in the property. Thereafter, Respondents changed their mind and decided that they would return the \$8,000 to S.P., but only in installment payments and only after they sold the property. By January 2013, no refund payments had been provided to S.P. by Respondents.

12. On January 27, 2013, Respondents and S.P. executed a promissory note in which Respondents agreed to pay \$8,000 to S.P. by May 1, 2013. After Respondents failed to pay the promised amount by May 1, 2013, S.P. filed a small claims lawsuit against them in the Superior Court of California, County of Orange, Case Number 30-2014-00696017-SC. (Ex. 8.) In settlement of the lawsuit, Respondents agreed to pay S.P. a total of \$8,500. The full \$8,500 was eventually paid by Respondents to S.P. in 2014.

13. S.P. would not have agreed to purchase an interest in the property if Respondents had been forthcoming about the fact that they did not own the property.

14. Respondents admitted at hearing that they did not own the property. However, Respondents testified that S.P. was aware at all relevant times that Respondents did not own the property. Respondents' self-interested testimony that they were forthcoming about the property's ownership is not credible based on the weight of the evidence to the contrary, including the testimony of S.P. as corroborated by documents in evidence. (Exs. 3 through 6 and 11.) In fact, the documents submitted into evidence by Respondents contradict their hearing testimony that S.P. was aware that Respondents did not own the property from the

time she entered into the agreement to purchase a one-third interest in the property in May 2011. Specifically, in the e-mail communication between Respondents and R.S. summarizing their defense in this matter, it states “– 6/2012 – [S.P.] is stating she discovered you were not the owners. COUNTER: obviously she did not know about the inter family transfer deed that was unrecorded and the background behind your new partnership in your corporation. Exhaling (*sic*) these facts (if needed) will explain the reason why title was not under both your names at the time.” (Ex. A at p. 3.)

15. Respondents take no responsibility for their dishonest dealing with S.P. and misrepresentation of the ownership of the property. In fact, at hearing Respondents testified that S.P. breached their agreement by stopping payment on the \$12,000 once she discovered that Respondents had failed to disclose the true ownership of the property. Respondents continue to be in the real estate business, with Respondent Hernandez acting as the office manager and partial owner of Orange County Real Estate, Inc. and Respondent Guerrero working as a real estate salesperson at the same company. Respondents’ evidence indicates that they were required to pay a fine and take continuing education courses as a result of their transaction with S.P. (Ex. A at p. 3.) Respondent Hernandez did not provide evidence of completion of the additional continuing education courses. Respondent Guerrero’s completed additional continuing education courses in July 2014. (Ex. E.)

16. Respondents founded a scholarship program entitled the “Transformational Scholarship,” at Cesar E. Chavez High School in Santa Ana, California. As of July 1, 2012, Respondents had provided over \$10,000 in scholarships. (Ex. F.) For the past five years, Respondents’ scholarships have provided the means for three to five high school students to attend college.

17. The Bureau has incurred reasonable costs of investigation and enforcement of this matter in the total sum of \$241.50. (Ex. 12.)

LEGAL CONCLUSIONS

1. The burden of proof is on the Complainant to show that Respondents’ real estate salespersons licenses should be disciplined. To prevail in this matter, Complainant must establish their allegations against Respondents through clear and convincing evidence, to a reasonable certainty. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. Code section 10177 provides states that “The commissioner may suspend or revoke the license of a real estate licensee . . . who has . . . : [¶] . . . [¶] (j) [E]ngaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.”

3. Cause exists under code section 10177, subdivision (j), to discipline Respondent Hernandez’s salesperson’s license based on her dishonest dealing with S.P. and

misrepresentation to S.P. that Respondents owned the property, based on factual findings 3 through 9 and legal conclusions 2 and 3.

4. Cause exists under code section 10177, subdivision (j) to discipline Respondent Guerrero's salesperson's license based on her dishonest dealing with S.P. and misrepresentation to S.P. that Respondents owned the property based on factual findings 3 through 9 and legal conclusions 2 and 4.

5. California Code of Regulations, title 10, section 2912, which contains the Bureau's rehabilitation guidelines states, in relevant part:³

The following criteria have been developed by the Bureau pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the Bureau. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the Bureau.)

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

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

³ The Bureau has only one regulation containing rehabilitation criteria for licentiates, and is primarily focused on rehabilitation from convictions. Only the criteria deemed to apply to acts of misconduct as well as to convictions are set forth.. (Cal. Code Regs., tit. 10, § 2912, subs. (a) through (j).)

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

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

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social 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 any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

7. Respondents have not met the relevant and necessary rehabilitative criteria. Most importantly, they did not acknowledge their actions in dishonestly inducing S.P. into an agreement to become part owner of a property by misrepresenting themselves as the owners of the property when, in fact, they knew they did not own the property. (Cal. Code Regs., tit. 10, § 2912, subd. (m).) Further, Respondents initially refused to refund the moneys paid by S.P. to become part owner of the property after she discovered the truth about the property's ownership and requested a refund of the money she paid to Respondents. While

Respondents did eventually change their position and agree to provide restitution to S.P., Respondents did not promptly provide the promised restitution, causing S.P. to have to resort to filing a small claims action against Respondents to collect the moneys owed. Moreover, Respondents' failure to acknowledge responsibility at hearing for their dishonest dealings is troubling and leads to the reasonable conclusion that there is a likelihood that Respondents will continue to engage in similar business practices which led to the Bureau taking action against their licenses in this matter. Respondent Hernandez has not provided evidence of completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement. (Cal. Code Regs., tit. 10, § 2912, subd. (k).) Respondent Guerrero's completion of additional continuing legal education courses in real estate was undertaken and completed at the request of the Bureau. Finally, while Respondents are commended for having "significant community involvement" by funding high school scholarships, their meeting of that one rehabilitative criteria is outweighed by their failure to meet the remaining relevant rehabilitative criteria. (Cal. Code Regs., tit. 10, § 2912, subd. (l).)

8. Respondents expressed no remorse for their actions at trial. Indeed, Respondents attempted to shift the blame for their actions to the victim of their duplicity, S.P. Further, Respondents continued to deny their actions in engaging in dishonest real estate salesperson practices to the detriment of the public. The public interest should, therefore, be protected by revoking Respondents real estate salesperson licenses.

9. Section 10106 entitles the Bureau to recover from Respondents its reasonable costs it has incurred in connection with the investigation and enforcement of this matter. The Bureau has incurred reasonable investigative costs in the sum of \$241.50, as found in factual finding 17.

ORDER

1. Real estate salesperson license number 01381811 issued to Respondent Claudia Mireya Hernandez is revoked.

2. Real estate salesperson license number 01852421 issued to Respondent Yadira Jannet Guerrero is revoked.

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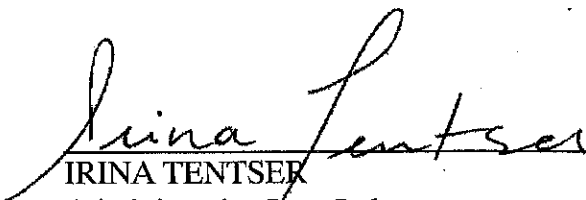
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3. Respondents Claudia Mireya Hernandez and Yadira Jannet Guerrero are ordered, jointly and severally, to reimburse the Bureau \$241.50 in its costs of investigation and enforcement.

DATED: June 24, 2015

A handwritten signature in cursive script, reading "Irina Tentser", written in black ink. The signature is positioned above the printed name.

IRINA TENTSER
Administrative Law Judge
Office of Administrative Hearings