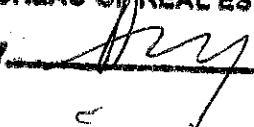


FILED

AUG 31 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

CAPITAL REALTY ADVISORS INC.;
REBECCA FLORENCE LURY,
individually and as designated officer of
Capital Realty Advisors, Inc.,

Respondents.

) CalBRE No. H-39778 LA

) OAH No. 2015040424

DECISION

The Proposed Decision dated July 20, 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 corrections are made:

Findings, Page 1, Paragraph 2, Line 2:

"C/018337905" shall read: "C/01837905".

Order, Page 5, Paragraph 2, Line 3:

"C/018337905" shall read: "C/01837905".

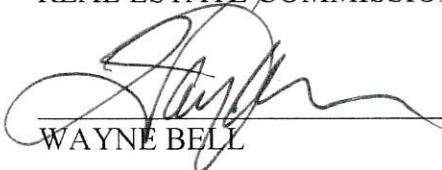
The Decision suspends or revokes the real estate license of Capital Realty Advisors Inc., but the right to a restricted license is granted to Respondent Capital Realty Advisors, Inc. The Accusation against Respondent Rebecca Florence Lury is dismissed.

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 September 21, 2015.

IT IS SO ORDERED 8/25/2015

REAL ESTATE COMMISSIONER



WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CAPITAL REALTY ADVISORS, INC.;
REBECCA FLORENCE LURY,
individually and as designated officer of
Capital Realty Advisors, Inc.,

Respondents.

BRE No. H-39778 LA

OAH No. 2015040424

PROPOSED DECISION

The hearing in this matter was before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on July 13, 2015. Maria Suarez (complainant) was represented by James R. Peel, Counsel. Capital Realty Advisors, Inc. (respondent CRAI) was represented by Rebecca Florence Lury (respondent Lury), its President, Chief Executive Officer, Secretary and Treasurer, who also represented herself.

Evidence and argument was received and the matter was submitted for decision on July 13, 2015.

FACTUAL FINDINGS

1. Complainant filed the Accusation solely in her official capacity as a Deputy Real Estate Commissioner of the Bureau of Real Estate (Bureau), State of California.
2. Respondent CRAI is licensed as a corporate real estate broker operating under license number C/01837905 with respondent Lury as its designated officer. Respondent CRAI was originally licensed on December 20, 2007. The license expired on December 19, 2011, was reissued on August 27, 2014, and will expire on August 26, 2018. (Exhibit 2.) There was no evidence of any prior disciplinary matters relating to the corporate real estate broker's license.
3. Respondent Lury is licensed as a real estate broker operating under license number B/01360156. She was issued a salesperson's license in 2003. The broker's license was issued on March 30, 2005, has been renewed, and will expire on March 29, 2017. (During the hearing it was discovered that the license history certification for respondent Lury, exhibit 2, lists an erroneous expiration date of March 29, 2007.)

4. Respondent CRAI operates a property management business, managing 64 apartment complexes with 30 owners, and 975 total rental units. Respondent Lury is the only Bureau licensee working for respondent CRAI.

5. Bureau auditor Chona Picayo was assigned to perform an audit of respondent CRAI's real estate activities. Before she began she researched the license status of respondent CRAI and respondent Lury, and was aware of the lapse in the license of respondent CRAI. The audit took place intermittently from October 9, 2014, to January 30, 2015, and covered the period from January 1, 2012, to September 30, 2014. The audit confirmed that respondents performed activities during this period for which a real estate broker license was required, but respondent CRAI's license had not been renewed. The audit included review of other activities, and the audit report (exhibit 3) references other subjects. However, the Accusation relates to only the performance of real estate management services during the period when the license of respondent CRAI had lapsed.

6. Respondents were present at the hearing and prepared to address all of the subjects included in the audit report. However, when informed that the Accusation related to only the lapse of the corporation's license, respondent Lury agreed that the license of respondent CRAI had lapsed as alleged, and that she and respondent CRAI performed real estate management services during that period.

7. Respondent Lurie explained that, as she was the only licensed employee engaged in real estate management services that required a license, she did not believe that it was necessary to maintain the license of respondent CRAI. She later learned, from a letter from Bureau investigator Samuel Delgado, that it was necessary for respondent CRAI to have an active license. Respondent Lurie then renewed the license of respondent CRAI. Respondent Lury was informed that the audit was a random audit. She recalls having two brief conversations with investigator Delgado regarding his letter and the expired license of respondent CRAI.

8. Complainant submitted three exhibits relating to the Bureau's claim for costs in connection with the investigation and prosecution of this matter, for total costs of \$8,109.26. Exhibit 4 includes investigation costs of \$1,417.60, comprised of the following: a program technician, 0.8 hours, at \$37 per hour; special investigator Delgado, 22 hours, at \$62 per hour; and a supervising special investigator, 0.3 hours, at \$80 per hour. Exhibit 5 refers to auditor Picayo's audit, and includes her 103.5 hours, at \$57 per hour, mileage expense, and two supervising auditors, 2 hours, at \$77 per hour (subtotal \$6,241.66). Exhibit 6 refers to enforcement costs comprised of attorney Peel's 5 hours, at \$89 per hour (subtotal \$450). The correct amount for attorney Peel's bill would be \$445.

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LEGAL CONCLUSIONS

1. Under Business and Professions Code section 10130, “[i]t 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. . . .”

2. Under Business and Professions Code section 10177, subdivision (d), the Bureau may suspend or revoke a real estate broker’s license if the licensee has “willfully disregarded or violated” the statutes or regulations relating to real estate licenses.

3. Cause exists to suspend or revoke the corporate real estate broker license of respondent CRAI pursuant to Business and Professions Code sections 10130 and 10177, subdivision (d), for performing activities that require a license while the corporate license was expired, for the reasons set forth in Factual Findings 2 through 6, and Legal Conclusions 1 and 2.

4. Cause does not exist to suspend or revoke the real estate broker license of respondent Lury as she did not violate Business and Professions Code sections 10130 and 10177, subdivision (d). At all times that respondent Lury performed services for which a real estate license was required, she held her own, valid broker license, as set forth in Factual Findings 3 through 6. Both respondents performed services requiring a license during the period of CRAI’s lapsed license. Respondent Lury was properly licensed. No other theory of liability was alleged (except section 10177, subdivision (j), discussed below).

5. Under Business and Professions Code section 10177, subdivision (j), the Bureau may suspend or revoke a real estate broker’s license if the licensee has “[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.”

Fraud or dishonest dealing under this section includes such acts as misrepresenting a material fact, the amount of acreage, in a real estate transaction (*Cory v. Villa Properties* (1986) 180 Cal.App.3d 592), or omitting to make payments on a note encumbering land and, instead, using the money for the broker’s own purposes (*Chodur v. Edmonds* (1985) 174 Cal.App.3d 565), or when a broker making an oral contract for listing a property then provided a written contract with materially different terms (*Marks v. Watson* (1952) 112 Cal.App.2d 196).

In Civil Code section 1572, fraud is defined generally as the following acts of one person, with intent to deceive another person:

“1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

“2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

"3. The suppression of that which is true, by one having knowledge or belief of the fact;

"4. A promise made without any intention of performing it; or,

"5. Any other act fitted to deceive."

6. Cause does not exist to suspend or revoke either respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (j), for fraud or dishonest dealing, for the reasons set forth in Factual Findings 3 through 7, and Legal Conclusions 1 through 5. The Accusation alleged that there was fraud or dishonest dealing merely by performing acts requiring a license when the license had expired. But the acts admitted by respondents and proven by the evidence do not include the elements of any intent to deceive, or of any other affirmative acts such as those listed in the Civil Code.

7. Under all of the circumstances, complainant has established that respondent CRAI acted as a broker while its license was expired. Complainant did not prove that respondent Lury acted as a broker while her license was expired, and did not prove that there were any acts of fraud or dishonesty. The Accusation will be dismissed as to respondent Lury, and respondent CRAI's license will be restricted.

Costs

8. Under Business and Professions Code section 10106, if the Bureau prevails in a disciplinary proceeding, it may recover from a licensee its reasonably incurred costs connected to the investigation and enforcement of the matter. A certified copy of the actual costs, signed by the commissioner or a designated representative, is prima facie evidence of the reasonable costs incurred. The costs claimed are in the amount of \$8,109.26, as set forth in Factual Finding 8.

9. The cost of an audit may be recovered by the Bureau under Business and Professions Code section 10148, subdivision (b), but only if the audit determines, and a disciplinary order concludes, that there has been a violation of Business and Professions Code section 10145. No costs of the audit will be awarded here for several reasons. The legal grounds for recovery were not included in the Accusation, in violation of Government Code section 11503. More specifically, the Accusation refers to Business and Professions Code 10106, which relates to costs of investigation and enforcement. The Accusation does not make any reference to Business and Professions Code section 10148, subdivision (b), which allows recovery of the costs of an audit. There was no determination that respondents violated Business and Professions Code section 10145, which is a prerequisite to recovery of costs of an audit. The audit was random, not performed because of any suspected wrongdoing, and the auditor, before she began, was aware of the lapse in the license of respondent CRAI by virtue of her review of Bureau records. It was not discovered due to the audit.

10. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 10106. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Bureau must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Bureau must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the Bureau must consider a respondent's ability to pay; and the Bureau may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Id.* at p. 45.)

11. The amount of the costs award in this case will be reduced. No investigation was necessary to determine that respondent CRAI's license had lapsed, as the information was available in the Bureau's data. Soon after being contacted by investigator Delgado, respondent Lury renewed that license. Although major violations were alleged, a relatively moderate violation was proved, with no allegation or proof of any harm to the public. A majority of the allegations pleaded were not supported by the law and/or the facts. The costs of the audit are not recoverable under the facts and the law. Under the circumstances, Investigator Delgado's hours will be reduced from 22.0 to 5.0, at a rate of \$62 per hour. The reasonable costs of investigation are therefore \$363.60. The reasonable costs of enforcement are \$445. The total costs award is \$808.60.

ORDER

1. The Accusation against respondent Rebecca Florence Lury, real estate broker license number B/01360156, is dismissed.

2. All licenses and licensing rights of corporate real estate broker Capital Realty Advisor, Inc., with respondent Rebecca Florence Lury as its designated officer, operating under license number C/01837905, under the Real Estate Law are revoked; provided, however, a restricted corporate real estate broker license shall be issued to respondent Capital Realty Advisor, Inc. pursuant to Business and Professions Code section 10156.5 if respondent Capital Realty Advisor, Inc. makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent Capital Realty Advisor, Inc. shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

a. The restricted license issued to respondent Capital Realty Advisor, Inc. may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent Capital Realty Advisor, Inc.'s conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

b. The restricted license issued to respondent Capital Realty Advisor, Inc. may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent Capital Realty Advisor, Inc. 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.

c. Respondent Capital Realty Advisor, Inc. 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.

d. Respondent Capital Realty Advisor, Inc. shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that it's designated officer 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 respondent Capital Realty Advisor, Inc. fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent Capital Realty Advisor, Inc. presents such evidence. The Commissioner shall afford respondent Capital Realty Advisor, Inc. the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

e. Respondent Capital Realty Advisor, Inc. shall pay costs to the Bureau in the sum of \$808.60, either in a lump sum or in a payment plan acceptable to the Bureau.

DATED: July 20, 2015.

DocuSigned by:
David Rosenman
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DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings