

FILED

NOV 25 2015

BUREAU OF REAL ESTATE

By Spencer

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

AYRA LIN FAN; VICTORVILLE
INVESTMENTS REALTY, INC.

Respondents.

CalBRE No. H-39805 LA

OA# No. 2015041237

DECISION

The Proposed Decision dated October 23, 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 DEC 15 2015

IT IS SO ORDERED

11/22/2015

REAL ESTATE COMMISSIONER

WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

AYRA LIN FAN; VICTORVILLE
INVESTMENTS REALTY, INC.

Respondents.

Case No. H-39805 LA

OAH No. 2015041237

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on October 12, 2015, at Los Angeles, California.

Diane Lee, Counsel for the Bureau of Real Estate (Bureau), appeared and represented complainant Maria Suarez, a Deputy Real Estate Commissioner of the State of California.

Ping C. Shen, attorney at law, appeared and represented respondents Ayra Lin Fan and Victorville Investments Realty, Inc. (VIRI). Respondents were not present at the hearing.

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

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity. Respondent Fan timely submitted a Notice of Defense on her own behalf, but a Notice of Defense was not filed on behalf of VIRI. The failure to file a notice of defense constitutes a waiver of VIRI's right to a hearing, but the Bureau in its discretion may nevertheless grant a hearing. (Gov. Code, § 11506, subd. (c).) Complainant did not request that the matter be remanded for an agency default. Accordingly, the hearing proceeded against both respondents.

2. The Bureau issued salesperson license number B/01873194 to respondent Fan on November 9, 2009. The Bureau subsequently issued a broker license to respondent Fan under the same license number. Her license is valid and will expire on June 17, 2019, unless renewed.

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3. On July 8, 2011, respondent Fan began doing business as Victorville Investments Realty. On April 12, 2012, respondent Fan filed Articles of Incorporation with the California Secretary of State establishing VIRI as a California corporation. Respondent Fan is the sole director, shareholder, and chief financial officer of VIRI.

4. The Bureau issued corporate license number C/01916998 to VIRI on July 26, 2012, with respondent as the designated officer.

5. On August 26, 2014, the Bureau assigned an auditor to investigate respondents' trust fund handling based on a consumer complaint. The auditor made two attempts to reach respondent Fan by telephone on August 27, 2014, leaving messages each time. On August 29, 2014, the auditor left another message for respondent Fan.

6. On August 29, 2014, respondent Fan called the auditor from China. During their conversation, they scheduled an appointment to examine the real estate books and records relating to VIRI. In a letter to respondents dated September 2, 2014, the auditor confirmed the inspection would take place on October 6, 2014 and requested the following documents for the period beginning July 26, 2012 to September 2, 2014:

- (A) Broker and salesperson licenses and agreements;
- (B) Corporate documents;
- (C) Fictitious Business name statements;
- (D) Bank statements for all trust accounts and general accounts;
- (E) Trust fund records of receipts and disbursements;
- (F) Separate records for each beneficiary of property;
- (G) Cancelled checks and deposit records for each account;
- (H) Trust account reconciliations;
- (I) Trust account bank signature cards;
- (J) List of properties managed;
- (K) Property management agreements and rental agreements;
- (L) Payment invoices.

7. On October 5, 2014, the day before the scheduled examination date, respondent Fan left the auditor a message that she could not appear for the examination.

8. On October 9, 2014, the auditor called respondent Fan and reached a recorded greeting that said: "This phone is not accepting any call [*sic*] at this time." (Ex.5.) Respondent Fan's assistant Alex Wang called the auditor and informed her that respondent Fan was in China and that he did not know when she would return. The auditor left a message with Wang to have respondent Fan call when she returned.

9. On October 20, 2014, the auditor called respondent Fan who did not answer. The auditor called Wang directly and asked for a letter of explanation for the nonappearance.

10. In her letter to the auditor dated October 30, 2014, respondent Fan explained that she was unable to appear for the examination because she traveled to China to be with her father who was "very sick and [goes to] the hospital very often." (Ex. 8.) Fan reported: "I still have 20 to 30 houses for property managements" and that she preferred "if auditing possibly I can email BRE the requirements you guides [*sic*] need. Since china [*sic*] and America are time difference [*sic*] so I prefer you allow me 1 to 2 weeks to provide what you guides [*sic*] need." (*Ibid.*)

11. On October 31, 2014, the auditor sent respondents a letter rescheduling the examination date to November 18, 2014 and requesting the same documents in Factual Finding 6. The audit period was adjusted to the period beginning July 1, 2012 and ending September 30, 2014.

12. On November 18, 2014, respondents failed to appear at the examination without advance notice of the intended absence.

13. On December 9, 2014, respondent Fan caused a Certificate of Dissolution to be filed with the California Secretary of State and VIRI dissolved.

14. On December 31, 2014, respondent Fan's assistant Alex Wang sent the Bureau a letter reporting that respondent Fan was "in China still, her father is in very sick condition . . . we don't know when she [*is*] coming back." (Ex. 8.)

15. Respondent Fan furnished the auditor with seven rental agreements and seven invoices. She otherwise produced the following documents to the auditor:

(A) A spreadsheet entitled "2012 Jan and Feb Rent Details"

(B) An invoice dated January 25, 2012 regarding appliance installation, trash removal, carpet cleaning, and other similar maintenance relating to property at 16312 Appletree Lane, Victorville, California.

(C) A spreadsheet entitled "June Jing" with debits for eight itemized repairs and credits, presumably for rents received in relation to seven properties.

(D) Seven untitled spreadsheet with debits and credits relating to unidentified properties.

16. The auditor was unable to obtain records to verify if VIRI maintained any trust accounts or to prepare a trust account reconciliation. Respondents failed to produce any broker or salesperson agreements, corporate documents, fictitious business name statements, bank statements, reconciliation reports, property management agreements, and other documents necessary to perform an audit.

17. Complainant incurred investigation costs in the amount of \$601.50. Complainant presented no evidence of prosecution costs. These costs were supported by a declaration and are reasonable.

LEGAL CONCLUSIONS

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

2. A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. (Bus. & Prof. Code, § 10148, subd. (a).)

3. A licensed corporation shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State. (Cal. Code Regs., tit. 10, § 2742, subd. (c).)

4. The Bureau may discipline the license of a real estate licensee who willfully disregarded or violated the law or any related rules or regulations. (Bus. & Prof. Code, § 10177, subd. (d).)

5. The Bureau may discipline the license of a real estate licensee who has had a license that was issued by another agency disciplined by that agency for acts that, if done by a real estate licensee, would be grounds for discipline of a California real estate license. (Bus. & Prof. Code, § 10177, subd. (f).)

6. The Bureau may discipline the license of a real estate licensee who has demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license. (Bus. & Prof. Code, § 10177, subd. (g).)

7. The officer designated by a corporate broker licensee shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the real estate law. (Bus. & Prof. Code, § 10159.2, subd. (a).)

8. The Bureau may discipline the license of a broker licensee who, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. (Bus. & Prof. Code, § 10177, subd. (h).)

9. A broker shall exercise reasonable supervision over the activities of his or her salespersons. (Cal. Code Regs., tit. 10, § 2725.)

10. In this case, respondents were given two opportunities to produce evidence of their compliance with trust handling procedures. To date, respondents have furnished documents that are incomplete and inadequate. Seven rental agreements were produced, although respondent Fan has reported managing 20 to 30 properties. Respondent Fan has been uncooperative with the Bureau's investigation. Rather than direct her assistant Alex Wang to marshal the records necessary to respond to the auditor's request, given her unavailability due to her father's failing health in China, respondent Fan caused VIRI to lose its good legal standing by filing a Certificate of Dissolution with the Secretary of State.

11. Cause exists to revoke respondents' licenses under Business and Professions Code sections 10148 and 10177, subdivisions (d) and (g), because they have failed to retain records as required by law. (Factual Findings 1-16.)

12. Cause exists to revoke VIRI's license under Business and Professions Code section 10177, subdivisions (d) and (f), and California Code of Regulations, title 10, section 2742, subdivision (c), because VIRI is not in good legal standing with the California Secretary of State. (Factual Finding 13.)

13. Cause exists to revoke respondent Fan's license under Business and Professions Code sections 10159.2 and 10177, subdivisions (h) and (g), because she has failed to supervise the activities of VIRI. (Factual Findings 1-14.)

14. Any licensee who was found to violate the law may be assessed and ordered to pay the Bureau's reasonable costs incurred to investigate and prosecute the action. (Bus. & Prof. Code, § 10106.)

15. Complainant has presented satisfactory proof that reasonable costs were incurred in the amount of \$601.50 to investigate the case against respondents. (Factual Finding 17.) Accordingly, respondents are jointly and severally liable under Business and Professions Code section 10106 for costs in the amount of \$601.50.

ORDER

1. Broker license number B/01873194 issued to respondent Ayra Lin Fan is
revoked.

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2. Corporate license number C/01916998 issued to Victorville Investments Realty, Inc. is revoked.

3. Respondents are jointly and severally liable for costs in the amount of \$601.50, payable to the Bureau within 90 days of the effective date of this Decision.

DATED: October 23, 2015

DocuSigned by:

Matthew Goldsby

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MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings