

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

FILED

JAN - 5 2016

In the Matter of the Accusation of

SANDRA MORRISON,

Respondent.

CalBRE No. H-39832 LA
OAH No. 2015060448

BUREAU OF REAL ESTATE

By 

* * *

DECISION

The Proposed Decision dated December 4, 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 1: "Department" shall read "Bureau".

Findings, Page 1, Paragraph 2, Line 3: "December 6, 2011" shall read "March 7, 2012".

Findings, Page 1, Paragraph 3, Line 1: "April 29, 2015" shall read "May 13, 2015" and "May 22, 2015" shall read "May 26, 2015".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson 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.

This Decision shall become effective at 12 o'clock noon on JAN 25 2016.

IT IS SO ORDERED

12/29/2015

REAL ESTATE COMMISSIONER


WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SANDRA MORRISON,

Respondent.

Case No. H-39832 LA

OAH No. 2015060448

PROPOSED DECISION

This matter was heard on September 10, 2015, by Erlinda G. Shrenger, Administrative Law Judge with the Office of Administrative Hearings (OAH), in Los Angeles.

James R. Peel, Counsel, represented complainant.

Lawrence P. Adamsky, Esq., represented respondent Sandra Morrison.

Oral and documentary evidence was received, argument was heard, the matter submitted, and the record closed on the hearing date.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Administrative Law Judge takes official notice that complainant Maria Suarez made and filed the Accusation, No. H-39832 LA, solely in her official capacity as a Deputy Real Estate Commissioner for the Bureau of Real Estate (Bureau), State of California.

2. Sandra Morrison (Respondent) is licensed by the Department as a real estate salesperson. Her real estate salesperson license, number S/01207020, was originally issued in 1996. The license was last renewed on December 6, 2011, and has an expiration date of March 6, 2016.

3. The Accusation was filed on April 29, 2015. On May 22, 2015, Respondent submitted a Notice of Defense which contained her request for a hearing in order to present a defense or matters in mitigation to the allegations in the Accusation.

4. The Accusation is based on a consumer complaint against Respondent filed with the Bureau on November 20, 2013, by property owner Michelle N. (MN), who testified at this hearing. Respondent was MN's real estate agent when she purchased a house located in Adelanto, California (Subject Property), which MN intended to use as a rental property. Escrow on the transaction closed in May 2012. MN felt that Respondent "did a good job" as her real estate agent on the transaction.

5. In the consumer complaint, MN claimed that Respondent collected the September 2013 rent from the tenant of the Subject Property but withheld those funds from MN. MN also claimed that Respondent had a valve illegally installed on the water meter at the Subject Property, resulting in unauthorized water use at the property and an unpaid water bill totaling \$1,859.44, which was ultimately paid by MN.

Unlicensed Broker Activity

6. On August 1, 2012, MN and Respondent entered into a Property Management Agreement, pursuant to which MN appointed and granted Respondent "the exclusive right to rent, lease, operate, and manage the [Subject Property]" for the period August 1, 2012, to December 31, 2015, and Respondent agreed to furnish services for "the rental, leasing, operation and management of the [Subject] Property." (Exh. 3.) Respondent prepared the Property Management Agreement using a form developed by the California Association of Realtors (C.A.R. Form PMA, Revised 4/11). Respondent filled in her name in the space for indicating the real estate broker's name. She filled in her mailing address of record with the Bureau (i.e., P.O. Box 4326, West Covina, California 91791) in the space for indicating the real estate broker's address. (Exh. 3, p. 3.) MN understood that Respondent was licensed as a real estate salesperson, and she never asked Respondent if she was a real estate broker.

7. The Property Management Agreement did not specify the compensation to be paid to Respondent for her services. MN testified credibly that she and Respondent had a verbal agreement that Respondent would be paid \$50 per month for her services. Respondent's testimony that she agreed to perform services under the Property Management Agreement for no compensation was not credible, given the three-year duration of the agreement and the services she was to perform during that period.

8. In or about October 2012, Respondent placed a family of four as the tenants for the Subject Property. Respondent prepared a Residential Lease or Month-to-Month Rental Agreement (C.A.R. Form LR, Revised 4/11) (Lease). The Lease identified MN and Respondent as "Landlord." The Lease provided for a month-to-month tenancy which was to begin on October 15, 2012. The Lease indicated that the rent was \$1,100 per month and was to be paid to "[Respondent] c/o [MN]" at P.O. Box 4326, West Covina, California 91791, which was Respondent's mailing address of record with the Bureau. (Exh. 4A.)

9. During her testimony at the hearing, MN confirmed that the Property Management Agreement admitted as Exhibit 3 was the contract she had with Respondent, but she denied that she signed or initialed the document. MN testified that the signature

shown in Item 15, purporting to be MN's signature, is not her signature and she does not know who placed that signature on the document. Respondent admitted that she prepared the Property Management Agreement (Exhibit 3), but she did not know how a signature purporting to be MN's signature was placed on the document.

10. At the hearing, MN was also asked about the Lease with the tenants. Initially, she was shown a copy of the Lease that was admitted as Exhibit 4. MN testified that Exhibit 4 was a copy of her rental agreement with the tenants, but she noted that Exhibit 4 did not have signatures or initials for the tenants, MN, and Respondent. MN had never seen Exhibit 4 prior to being shown the document at the hearing. MN testified that she had a different copy of the Lease that contained signatures and initials. MN was shown a copy of the Lease that was admitted as Exhibit 4A. Both MN and Respondent, in their testimonies, confirmed that Exhibit 4A was a copy of the operative lease agreement with the tenants that contained signatures and initials.

11. The tenants rented the Subject Property for one year, commencing on October 15, 2012. The tenants received rental assistance from a government program commonly known as Section 8. Of the \$1,100 rent due each month, MN received \$350 directly from the Section 8 program. MN and Respondent gave conflicting testimony regarding the payment of the remaining \$750 portion of the monthly rent. MN testified that the tenants paid the \$750 amount directly to Respondent who, in turn, sent MN a check for \$700, after deducting \$50 as the fee for her property management services. Respondent denied that she collected the monthly rent payments from the tenants. She also denied being paid \$50 per month for property management services.

12. Respondent's testimony denying that she collected rent payments was inconsistent and unclear. She denied collecting rent payments from the tenants. Then, she testified that she collected the rent on two occasions. Respondent testified that she collected the tenants' first rent payment, which was paid in cash, and forwarded all of those funds to MN and did not retain \$50 as a fee for her services. Respondent testified that, on another occasion and at MN's request, she collected a rent payment from the tenants made by a money order. Later in her testimony, Respondent testified that she collected rent payments from the tenants on two occasions, both of which were paid in cash, and she sent MN personal checks for the amounts collected. Respondent did not offer any documentation, such as copies of her personal checks, to corroborate this testimony.

13. On the issue of collecting rent payments, MN's testimony was more credible, as it was consistent with the term of the Lease requiring the tenants to pay the rent to Respondent at her address of record with the Bureau. Respondent's testimony was inconsistent and unclear. Thus, it was established that Respondent collected rents from the Subject Property.

14. MN received the rent due each month (less the \$50 fee for Respondent's property management services) starting from October 15, 2012, through the month of August 2013. MN did not receive the full rent payment due for the month of September 2013. MN

only received the \$350 payment from the Section 8 program. MN testified that the tenants told her that they had paid their \$750 portion of the rent to Respondent. Respondent denied that she collected and withheld any of the rent due for September 2013. MN's testimony is hearsay and, standing alone, is insufficient to establish that the tenants paid their portion of the September rent to Respondent. Thus, it was not established that Respondent collected the September rent from the tenants and withheld and misappropriated those funds to her own use and benefit.

15. At the time Respondent entered into the Property Management Agreement with MN, her employing broker was Impact Realty, Inc. in West Covina. Tawfiq Bishara (Bishara) testified at this hearing. Bishara has been a real estate broker for 25 years and has conducted business as Impact Realty, Inc. for 20 years. For the past 14 years, Respondent has been employed by Bishara as a real estate salesperson. Bishara has not received any customer complaints involving Respondent's work as a real estate salesperson.

16. Bishara was unaware that Respondent was involved with the Subject Property as a property manager until he was contacted by the Bureau regarding this case. Bishara's testimony established that Impact Realty, Inc. conducts business from two offices, with one office using the business name "Century 21" and the other office using the business name "Coldwell Banker." Property management services are provided in the Coldwell Banker office but not in the Century 21 office. Respondent has only worked for Bishara in the Century 21 office. Bishara did not receive any rent collected from the Subject Property.

17. By entering into the Property Management Agreement with MN and agreeing to rent, lease, operate and manage the Subject Property, by identifying herself as a real estate broker in the Property Management Agreement, by locating and placing a tenant at the Subject Property and entering into a lease agreement with that tenant, and by collecting rent payments from the tenant, Respondent engaged in the business of, acted in the capacity of, and assumed to act as, a real estate broker without first having secured a real estate broker's license from the Department, within the meaning of Business and Professions Code sections 10130 and 10131.

Unauthorized Water Service

18. Pursuant to Item 9 of the Lease, the tenant agreed "to pay for all utilities and services, and the following charges: water, gas, electric, cable," except for trash, which would be paid by the landlord. (Exh. 4A, p. 2.) Item 9 also provided that, if utilities are separately metered, the tenants "shall place utilities in [the tenants'] name" as of the commencement date of the Lease, which was October 15, 2012.

19. MN believed that the tenants were paying the water bill for the Subject Property. She later learned that was not the case. In October 2013, MN received a water bill from the City of Adelanto showing a balance due of \$1,859.44 for unauthorized water usage at the Subject Property. MN was informed by the water company that a valve had been illegally placed on the water meter to turn on the water at the Subject Property. Until she

was informed by the water company, MN was not aware that the water had been turned on for the tenants through an illegal valve on the water meter. On November 5, 2013, MN paid the unpaid balance due of \$1,859.44. As of November 6, 2013, the account showed a zero balance due. (Exh. 5.)

20. MN contends that Respondent should reimburse her \$1,859.44 for the water bill because the unauthorized water use resulted from Respondent turning on the water with an illegal valve on the water meter. In the consumer complaint, MN wrote: "[Respondent] informed me on October 20, 2013 that she instructed her handyman Candelario (last name unknown) to turn the water on via a valve/meter in the sidewalk prior to the tenants moving in to the property, knowing this was illegal." (Exh. 6.) At this hearing, MN testified she vaguely recalled a conversation with Respondent, during which Respondent indicated she knew about the valve and that Candelario had installed the valve. MN also testified that Respondent had indicated that she would take care of arranging water service for the tenants. Respondent, in her testimony, denied having any knowledge of, or instructing her handyman to install, an illegal valve on the water meter, and denied telling MN that she would arrange for water service on the property. Respondent contends that it was the tenant's responsibility to arrange for their water service. MN's uncorroborated testimony is not sufficient to establish that Respondent caused an illegal valve to be placed on the water meter at the Subject Property. MN's testimony must be balanced against her financial interest (i.e., obtaining reimbursement of \$1,859.44) in establishing that Respondent had an illegal valve placed at the Subject Property.

Mitigation / Rehabilitation

21. Respondent has worked as a real estate salesperson for 19 years, since 1996. She has no history of prior discipline against her real estate salesperson license.

22. Respondent characterized her identification as a real estate broker on the Property Management Agreement as being due to an "honest mistake." The computer software she used to generate the document automatically populated the fields of the document with her name and contact information. Respondent acknowledged that she should not have put her name on a document in a manner indicating she was a real estate broker. Respondent testified that she prepared the Property Management Agreement and the Lease at MN's request and solely for the purpose of assisting MN in meeting the requirements to locate a tenant through the Section 8 program. According to Respondent, the purpose of the Property Management Agreement was solely for establishing authorization for Respondent to speak with the Section 8 program on MN's behalf. Respondent admitted that she never told her employing broker, Mr. Bishara, about the Property Management Agreement with MN. Respondent now realizes she should have first discussed the situation involving MN and the Subject Property with Mr. Bishara before preparing the Property Management Agreement. Respondent testified her sole intent was to help MN with the Subject Property, which was MN's first investment property, and to assist MN in qualifying to rent the property through the Section 8 program. MN was unfamiliar with the Section 8 program whereas Respondent was familiar with the requirements of the program.

Respondent's testimony and her good intentions did not establish mitigation or excuse for her unlicensed broker activity.

23. Respondent presented the testimony of two character witnesses: Maria Vargas, who has known Respondent for 25 years, and Enrique Soria, who has known Respondent for four years. Each testified that Respondent had assisted them and other family members in real estate transactions. They testified of their favorable opinion of Respondent's character as a person and as a real estate professional. Soria has been involved in six or seven real estate transactions with Respondent, and has referred real estate clients to her. Both Vargas and Soria testified that their favorable opinion of Respondent was unaffected by their knowledge of the allegations brought against her in this case.

Cost Recovery

24. The Bureau incurred investigative costs of \$939.90 and enforcement costs of \$445, for a total of \$1,384.90. These costs are deemed reasonable, based on the declarations of Maria Suarez and James R. Peel. (Exhs. 7 and 8.)

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177¹ provides that the Bureau may suspend or revoke the license of a real estate licensee who has done any of the following:

Subdivision (d): Willfully disregarded or violated the Real Estate Law or the rules or regulations for the administration and enforcement of the Real Estate Law.

Subdivision (j): Engaged in any other conduct, whether of the same or different character than specified in this section, that constitutes fraud or dishonest dealing.

2. (A) Cause exists, pursuant to section 10177, subdivision (d), to suspend or revoke Respondent's real estate salesperson license for willfully disregarding and violating section 10130, in that Respondent engaged in the business of, acted in the capacity of, and assumed to act as a real estate broker without a license, in connection with MN and the Subject Property, based on Factual Findings 6-17.

(B) Section 10130 provides, in pertinent part, that it is unlawful for any person to engage in the business of, act in the capacity of, or assume to act as a real estate broker within this state without first obtaining a license from the Department. Section 10131, subdivision (b), defines a real estate broker as a person who, for compensation, does, among

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

other things: "Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, . . . or collects rents from real property."

(C) In this case, Respondent engaged in unlicensed broker activity in violation of section 10130. She entered into the Property Management Agreement with MN pursuant to which she agreed to rent, lease, operate and manage the Subject Property for MN. Respondent identified herself as a real estate broker in the Property Management Agreement, which she prepared. Respondent located and placed a tenant at the Subject Property, entered into a lease agreement with that tenant, and collected rents from the tenant. At the time she engaged in this conduct, Respondent was licensed by the Bureau only as a real estate salesperson.

3. (A) Cause exists, pursuant to section 10177, subdivision (d), to suspend or revoke Respondent's real estate salesperson license for willfully disregarding and violating section 10145, subdivision (c), in that Respondent collected rent payments from the tenants of the Subject Property but failed to forward the payments to her employing broker, based on Factual Findings 6-17.

(B) Section 10145, subdivision (c), provides, in pertinent part: "A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

(C) A real estate salesperson may perform the acts described in section 10131 only while employed by a licensed real estate broker. Section 10132 defines a real estate salesperson as "a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6." One of the acts set forth in section 10131, subdivision (b), is "collects rents from real property."

(D) In this case, when Respondent collected rents from the Subject Property, her salesperson license authorized her to collect and accept those funds only on behalf of her employing broker, Mr. Bishara. Respondent was not authorized to collect and accept rents in any other capacity. Under section 10145, subdivision (c), Respondent was required to immediately deliver the rents collected to Mr. Bishara, which Respondent failed to do.

4. Cause does not exist, pursuant to section 10177, subdivision (j), to suspend or revoke Respondent's real estate salesperson license for conduct constituting fraud or dishonest dealing. This cause for discipline was not established by the evidence.

5. The objective of license disciplinary proceedings is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in licensees. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d, 1016, 1030-1031.) The purpose of proceedings of

this type is not to punish Respondent. In particular, the statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.)

6. The public protection concern in this case arises from Respondent's acting in the capacity of, or assuming to act as, a real estate broker without having a broker's license. Her unlicensed broker activity occurred in 2012 in connection with MN and the Subject Property. She did not inform her employing broker of her activities. Such unlicensed activity, however, appears to be an isolated incident. Respondent has been licensed as a real estate salesperson since 1996 and has no history of prior discipline with the Bureau. Respondent's employing broker for the past 14 years, Mr. Bishara, testified favorably for her, stating that he has not received any customer complaints about Respondent's work as a real estate salesperson. Mr. Bishara continues to employ Respondent as a salesperson. Respondent also presented the testimony of two character witnesses who attested to their favorable opinions of Respondent's character as a person and real estate salesperson. Respondent has acknowledged it was a mistake to identify herself as a broker in real estate documents, and that she should have discussed her involvement with the Subject Property with her employing broker prior to entering into the Property Management Agreement with MN. Respondent was MN's real estate agent when MN purchased the Subject Property. MN found Respondent did a good job as her real estate agent. MN had no complaints about receiving the rents collected from the Subject Property, except for the rent due for September 2013. The evidence, however, was insufficient to establish that Respondent collected and misappropriated the tenants' September 2013 rent payment.

7. Based on the foregoing, the appropriate level of discipline in this case is a revocation with a right to a restricted salesperson license, as set forth in the Order below.

8. Section 10106, subdivision (a), provides that in any order issued in resolution of a disciplinary proceeding, "the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

9. Cause exists, pursuant to section 10106, to require Respondent to pay the Bureau the sum of \$1,384.90 for the reasonable cost of enforcement and investigation of this case. (Factual Finding 25.) The Accusation alleges two grounds for disciplinary action against Respondent: one ground based on section 10177, subdivision (d), and the second ground based on section 10177, subdivision (j). Since the Department prevailed on the cause for discipline based on section 10177, subdivision (d), but not on subdivision (j), it is appropriate to reduce the recoverable costs by 50 percent. Respondent shall be ordered to pay the Bureau the sum of \$692.45.

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ORDER

All licenses and licensing rights of Respondent Sandra Morrison under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent 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 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 Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent'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.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that 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. 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. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license;
and


(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that 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 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 Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall pay the Bureau the sum of \$692.45 as reimbursement for the reasonable cost of investigation and enforcement of this matter, in accordance with Business and Professions Code section 10106.

DATED: December 4, 2015


ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings