

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

FILED

MAR 23 2016

BUREAU OF REAL ESTATE

By 

In the Matter of the Accusation of

) CalBRE No. H-39969 LA

) OAH No. 2015100111

) AMERIMAX REALTY FINANCIAL.,
) doing business as Amerimax Financial
) Services and Amerimax Real Estate &
) Finance, and SANDRA K. RAUSCH,
) individually and as former designed officer
) of Amerimax Realty Financial,
)

Respondents.

DECISION

The Proposed Decision dated February 21, 2016, 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.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. 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 Sections 11521 and 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 April 12, 2016.

IT IS SO ORDERED

3/16/2016
REAL ESTATE COMMISSIONER


WAYNE BELL

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

In the Matter of the Accusation Against:

AMERIMAX REALTY FINANCIAL, doing
business as Amerimax Financial Services and
Amerimax & Finance, and SANDRA K.
RAUSCH, individually and as former
designated officer of AMERIMAX REALTY
FINANCIAL,

Respondents.

Case No. H-39969 LA

OAH No. 2015100111

PROPOSED DECISION

Administrative Law Judge Gloria A. Barrios (ALJ) heard this matter on January 26, 2016, in Los Angeles, California.

Steve Chu, Staff Counsel for the Bureau of Real Estate (Bureau), represented Veronica Kilpatrick (Complainant), Deputy Real Estate Commissioner.

Stephen G. Hammers, Attorney at Law, of Crooke, Gary & Hammers represented Respondents Amerimax Realty Financial, doing business as Amerimax Financial Services and Amerimax Real Estate & Finance (Respondent Amerimax), and Sandra K. Rausch (Respondent Rausch), individually and as former designated officer of Amerimax Realty Financial. Respondent Rausch was present at the hearing.

The record closed and the matter was submitted for decision on January 26, 2016.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.

2. Respondent Amerimax has been licensed as a corporate real estate broker, license number 01214762, since September 25, 1997.¹ The license expired on April 30, 2015 and has not been renewed.

3. Respondent Rausch has been licensed as a real estate broker, license number 01188093, since April 13, 1999. The license has been renewed through April 13, 2019. Respondent Rausch was licensed as the designated officer of Amerimax, license number 01214762, from April 19, 1999.

4. Business and Professions Code² section 10103 provides that the Bureau has jurisdiction over Respondent Amerimax's license and Rausch's designated officer license even though they have expired.

5. Respondent Rausch owns and operates Sandra K. Rausch dba Amerimax Capital Group (Amerimax Capital) as of August 20, 2015.

6. As a real estate broker and designated officer, Respondent Rausch is and was responsible, pursuant to the provisions of Code section 10159.2, for the supervision and control of the activities requiring a real estate license conducted on behalf of Respondent Amerimax by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

7. The Secretary of State for the State of California (Secretary of State) suspended Respondent Amerimax's corporation license on October 1, 2007, and remains suspended to date. Respondent Amerimax's active status as a California corporation was suspended due to the fact that Respondent Amerimax owed the California Franchise Tax Board (FTB) outstanding tax, penalties and interest. (Complainant's Exhibit 4.)

8. Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California, for another or others, and for or in the expectation of compensation within the meaning of Code section 10131, subdivision (d). Said activities included the operation and conduct of a mortgage loan brokerage business with the public wherein Respondents solicited borrowers or lenders for, or negotiated loans, or collected payments or performed services, for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

9. On July 9, 2001, the Department of Real Estate³ issued a Decision, effective August 14, 2001, in the Matter of the Accusation against Amerimax Realty Financial doing

¹ Dba Amerimax Financial Services and dba Amerimax Real Estate & Finance were added on April 14, 2000.

² All further statutory references are to the Business and Professions Code except when noted.

³ Effective July 1, 2013, the Department of Real Estate became the Bureau of Real

business as Amerimax Financial Services and Amerimax Real Estate & Finance and Sandra K. Rausch, individually and as designated officer of Amerimax Realty Financial, Case No. H-28831. The Bureau suspended Respondents' licenses for 60 days, but stayed 30 days suspension for two years upon meeting certain conditions. The basis of Respondents' discipline was that they violated Code sections 10240, 10176, subdivision (g) 10161.8, subdivision (g), and 10160. Their acts and omissions included but were not limited to failing to give borrowers required compensation information paid to Amerimax required by Code section 10241, failing to notify borrowers that they were charged for credit report fees in excess of the amount billed by the credit reporting company in violation of Code section 10176, subdivision (g) and failing to notify the Real Estate Commissioner, within five days, of Respondents' employment of licensed real estate salesperson Mike Rausch. (Complainant's Exhibit 5.)

10. Gary Edmund Rausch, Jr. (Gary Rausch) is the son of Respondent Rausch. The Rausch family owns and operates Respondent Amerimax. Gary Rausch is currently a real estate salesperson at Amerimax Capital. His employing broker is Respondent Rausch. Gary Rausch was the real estate broker and the designated officer at Respondent Amerimax from May 19, 1997 through September 24, 1998. On September 24, 1998, the Bureau revoked Gary Rausch's broker's and officer's licenses. (In the Matter of the Accusation against Eugene William Molinaro, doing business as Pacific Western Properties and doing business as Amerimax Realty Financial; Gary Edmund Rausch, Jr.; Tina Rausch; and Sandra Kay⁴ Rausch, Case No. H-27329 LA.) On March 3, 2015, the Bureau denied Gary Rausch's petition for reinstatement of broker's license. However, the Bureau granted him a restricted real estate salesperson's license that he held at the time of the hearing. (Petition for Reinstatement of Broker License, In the Matter of the Accusation against Gary Edmund Rausch, Jr., Case No. H-27329 LA.)

11. Gary Rausch stated that in 2007 Respondent Amerimax owed the FTB unpaid taxes, penalties and interest. At the same time he was going through a nasty divorce with his wife. Gary Rausch was having a difficult time emotionally. Gary Rausch contends everything in his life was pushed to the back burner. Ultimately, he on behalf of Respondent Amerimax rejected the amount (approximately \$10,000 to \$12,000) sought by the FTB to settle the owed taxes and revive Respondent Amerimax's corporate standing. He believed Amerimax owed the FTB approximately \$3,200. Gary Rausch did not hold a real estate license in 2007. Respondent Rausch did not meet with the FTB. It was Respondent Rausch's responsibility, not Gary Rausch's, to ensure that Respondent Amerimax pay its corporate taxes.

12. In 2011, Darryl M. Thomas, Auditor for the Bureau audited Respondent Amerimax's books.⁵ Gary Rausch met with Thomas. He said that Thomas asked him, "Why

Estate. All further references to the Department will be referred to as the Bureau.

⁴ In this matter Respondent Rausch was found not to have violated Code section 10130 in conjunction with section 10131, subdivision (d).

am I here?" Gary Rausch explained that Respondent Amerimax is no longer in business. He has not heard anything further from the Secretary of State, FTB or the Bureau.⁶

13. Respondent Rausch is a broker at Amerimax Capital located in Newport Beach. She holds an Individual Loan Originator License Endorsement (License Endorsement.) (See Respondent's Exhibits B and C; and Complainant's Exhibit 3.) Such a license allows an individual to make or service residential mortgage loans in California under the authority of a real estate license. The Bureau issues License Endorsements. Respondent Rausch has held the license since 2011. She argued the issuance of the License Endorsement by the Bureau demonstrates her good standing with the Bureau. Respondent Rausch likewise contended that Amerimax Capital is in good standing. (Respondent's Exhibit D.) She explained Amerimax Capital and herself have not been sued or suffered any complaints from consumers. Respondent Rausch explained that the Bureau took no disciplinary action after it examined Respondent Amerimax's books in 2011.

14. Respondent Rausch supports herself through her broker's license via Amerimax Capital, a sole proprietorship. She does not mislead the public. To this end, Respondent Rausch has made arrangements with an outside consultant. She has hired Teresa Johnson (Johnson), a certified public accountant (CPA) to review Amerimax Capital's bookkeeping and finances to avoid any accounting improprieties. Johnson is a CPA. She has been a CPA for 28 years. Johnson is experienced in corporate accounting. She has agreed to meet with Respondent Rausch a few times a year to review Amerimax Capital's bookkeeping and finances to ensure compliance with laws and regulations.

15. On cross-examination, Respondent Rausch claimed to have forgotten that the Bureau disciplined her license in 2001. (See paragraph 9.) She did not recognize the signature that appeared on the Stipulation and Agreement in Case No. H-28831, later adopted by the Bureau, was hers. Incredibly, Respondent Rausch did not even recognize the Stipulation and Agreement document. She also reluctantly admitted that Steven Zipperman, her counsel in the matter, whose signature appears below her signature on the Stipulation, was her attorney in Case No. H-28831. (Complainant's Exhibit 5, page 8.) Additionally, although Respondent Rausch accepted that Respondent Amerimax's corporate broker license was not in good standing, she thought that Gary Rausch "did all the right things."

16. Respondent Rausch testified that Respondent Amerimax has not conducted any business since 2007. She contends that is why she did not renew Respondent Amerimax's corporate broker license. Yet, when Respondent Rausch was shown an internet printout, <http://www.amerimaxfinancial.com/index.rad>, dated July 8, 2015, that showed Amerimax was operating and advertising itself to the public, she explained that Gary Rausch handled Respondent Amerimax's internet marketing. Respondent Amerimax had more than one website. She did not recognize the website. Amerimax Capital is located at the same

⁵ (See Respondent's Exhibit A; Thomas' business card.)

⁶ The Bureau filed the instant accusation on September 14, 2015.

address in Newport Beach as Respondent Amerimax and both have the same 800 telephone number and fax number. Respondent Rausch admitted her company, Amerimax Capital, retained the same 800 number as Respondent Amerimax. According to the web site, Respondent Amerimax advertises itself in several states. (Complainant's Exhibit 10.)⁷

17. Complainant introduced evidence as to the Bureau's cost of its investigation and enforcement of this matter pursuant to Code section 10106. The requested total amount is \$1,997.40, which is reasonable under the facts of this case. (Complainant's Exhibits 6 and 7.)

LEGAL CONCLUSIONS

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Code section 10177, subdivision (d) provides that a real estate licensee may be subjected to license discipline for willfully disregarding or violating the Real Estate Law or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law.

3. Code section 10177, subdivision (f) provides that a real estate licensee may be subjected to license discipline if he or she acted or conducted his or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state or another state revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license.

4. Code section 10177, subdivision (g) provides that a real estate licensee may be subjected to license discipline for demonstrated negligence or incompetence in performing an act for which a license is required.

5. Code section 10177, subdivision (h) provides that a broker licensee may be subjected to license discipline for failing to exercise reasonable supervision over the

⁷ Respondents objected to the admission of Complainant's Exhibit 10 on the basis that Complainant had failed to meet the procedural requirement of Government Code section 11514. The ALJ sustained the objection. However, Exhibit 10 was admitted for purpose of impeachment.

activities of her salespersons, or, as the officer designated by a corporate broker licensee, failing to exercise reasonable supervision and control over the activities of the corporation for which a real estate license is required.

6. It is clear from the evidence that Respondent Amerimax failed to pay its taxes, penalties and interest to the FTB that led to the suspension of its corporate status by the Secretary of State. Gary Rausch's testimony that in 2007 he was too emotionally distraught to negotiate a settlement with the FTB regarding Respondent Amerimax's unpaid taxes is not credible. Moreover it is Respondent Rausch's responsibility as the real estate broker and designated officer pursuant to the provisions of Code section 10159.2, to supervise Respondent Amerimax and ensure that it fully complies with the law. Respondent Rausch abdicated her responsibility in allowing Gary Rausch to decide whether Amerimax's tax debt should be paid. In 2007, Gary Rausch did not hold real estate broker and designated officer licenses. In fact, he did not hold a real estate license. The Bureau revoked Gary Rausch's real estate broker and officer licenses in 1998.

7. Respondents argue that they have not heard from the FTB or the Secretary of State regarding the suspension of Respondent Amerimax's corporate license. Furthermore, they argue that the Bureau conducted an audit of Respondent Amerimax's records in 2011 and did not file any accusation based on its review. Because the Bureau did not issue an accusation at that time based on its audit does not certify Respondents are lawfully operating in all aspects. Likewise, Respondents argue that the Bureau issued Respondent Rausch a License Endorsement in 2011. They appear to be arguing that the Bureau would not have issued such a credential if they suspected Respondent Rausch was involved in any wrongdoing. However, the issuance of a License Endorsement does not prevent the Bureau from taking disciplinary action against Respondent Rausch.

8. Respondent Amerimax continues to operate as a corporate real estate broker even though its corporate license was suspended in 2007. As recently as July 8, 2015, Amerimax was holding itself out to the public as a full service real estate broker through its web site, office address, 800 telephone number and fax number. Respondent Rausch and Gary Rausch continue to operate Respondent Amerimax. Respondent Rausch did not ensure that Respondent Amerimax's web site was removed after its corporate status was suspended. Once again she relinquished her responsibility to Gary Rausch.

9. Respondents argue that Complainant may not introduce "prior bad acts" to prove conduct on a specific occasion pursuant to Evidence Code section 1101, subdivision (b). Respondent objects to the admission of Respondents' and witness Gary Rausch's prior record of discipline by the Bureau. However, it has long been held that the Bureau may consider prior history of discipline as a factor in aggravation or as to witness Gary Rausch's credibility. In order to determine the proper degree of discipline the Bureau may properly consider Respondents' prior disciplinary record. (*McMorris v. State Bar* (1981) 29 Cal.3d 96.) Additionally, Respondents object to the admission of Bureau decisions and license history that document Respondents' and Gary Rausch's record of discipline as hearsay. All such exhibits were properly admitted as government records under Evidence Code sections

1271, 1280, 1284 or administrative hearsay⁸ that was corroborated by witness testimony or other authenticated exhibits. (Complainant's Exhibits 2 through 5 and 8.)

10. Cause exists to impose discipline on Respondent Amerimax's corporate real estate broker's license pursuant to Code sections 10177, subdivisions (d), (f) and (g) because Respondent Amerimax's corporate license was suspended by the Secretary of State. (Factual Findings 7 and 11, and Legal Conclusions 2 through 4.)

11. Cause exists to impose discipline on Respondent Amerimax's corporate real estate broker's license pursuant to Code sections 10177, subdivisions (d) and (g), because Respondent Amerimax continued, and still continues, to operate as a corporate real estate broker after its corporate license was suspended. (Factual Findings 7 and 16, and Legal Conclusions 2 and 4.)

12. Cause exists to impose discipline on Respondent Rausch's broker's and designated officer's licenses pursuant to Code sections 10177, subdivisions (d), (f), (g) and (h) because she failed to exercise reasonable supervision and control over the activities of the Respondent Amerimax by allowing its corporate license to be suspended. (Factual Findings 7 and 11, and Legal Conclusions 2 through 5.)

13. Cause exists to impose discipline on Respondent Rausch's broker's and designated officer's licenses pursuant to Code sections 10177, subdivisions (d), (g) and (h) because she allowed Respondent Amerimax to continue to operate after its corporate license was suspended. (Factual Findings 7 and 16, and Legal Conclusions 2, 4 and 5.)

14. Cause exists to impose discipline on Respondent Rausch's broker's and designated officer's licenses pursuant to Code sections 10177, subdivisions (d), (g) and (h) because she allowed Gary Rausch to function as a designated officer and/or broker in the operation of Respondent Amerimax even though Gary Rausch held no active real estate license at the time. (Factual Findings 5, 7 and 16, and Legal Conclusions 2, 4 and 5.)

15. Respondents present little evidence by way of rehabilitation and mitigation. Respondent Rausch argued that in going forward she has arranged for a CPA to review Amerimax Capital's business records and finances to ensure compliance with laws and regulations. Despite Respondent Rausch's proposal, Respondents have demonstrated a disturbing lack of respect for their profession. The Real Estate Law and the disciplinary procedures are designed to protect the public. Clients rely upon real estate licensees'

⁸ The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cap.App.4th 1001.)

integrity to represent their interests. (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; *Golde v. Fox* (1976) 98 Cal.App.3d 167, 177; *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402) Real estate brokers in particular, are charged with a fiduciary duty to their clients that require the utmost care, integrity, honesty and loyalty. Brokers are charged with supervising other real estate professionals to ensure their compliance with the laws and regulations governing their real estate activities. Here, Respondents engaged in a pattern of serious misconduct. Respondent Rausch's testimony that she did not remember her prior discipline by the Bureau in 2001 is not only not credible but also implausible. Respondent Rausch did not ensure that Respondent Amerimax follow the law by first not safeguarding that Respondent Amerimax pay its taxes and then allowing Respondent Amerimax to continue to function after its corporate license was suspended. Respondent Rausch is unwilling or unable to learn from her mistakes.

16. In this proceeding, Respondents have not offered sufficient evidence of rehabilitation that addresses the issue of their repeated wrongdoing. Respondents have a prior history of discipline. Respondent Rausch, in particular, has shown no insight into her misconduct. In weighing Respondents' wrongdoing and considering Respondents' lack of mitigation and rehabilitation evidence, the public will be not be protected if Respondents are allowed to retain their licenses.

ORDER

1. The corporate real estate broker, license number 01214762, and all licensing rights of Respondent Amerimax Realty Financial, doing business as Amerimax Financial Services and Amerimax Real Estate & Finance are revoked.

2. The real estate broker, license number 01188093, and designated officer, license number 01214762, and all licensing rights of Sandra K. Rausch are revoked.

3. Respondents shall pay to the Bureau the sum of \$1, 997.40 at such time and in such manner as the Bureau may, in its discretion, direct.

DATED: February 21, 2016

DocuSigned by:

gloria a. barrios

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GLORIA A. BARRIOS

Administrative Law Judge

Office of Administrative Hearings