

BEFORE THE BUREAU OF REAL ESTATE

FILED

STATE OF CALIFORNIA

AUG 16 2016

BUREAU OF REAL ESTATE

By *W. S. Bell*

In the Matter of the Accusation of)	CalBRE No. H-40144 LA
)	
LAWRENCE S. RABINOFF,)	OAH No. 2016031248
)	
Respondent.)	

DECISION

The Proposed Decision dated July 18, 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, but the right to a restricted salesperson license is granted to Respondent.

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 SEP - 5 2016.

IT IS SO ORDERED 8/14/2016

REAL ESTATE COMMISSIONER

Wayne S. Bell
WAYNE S. BELL

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

In the Matter of the Accusation of:

LAWRENCE S. RABINOFF,

Respondent.

Case No. H-40144 LA

OAH No. 2016031248

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on June 16, 2016.

James R. Peel, Staff Counsel, represented Complainant Chika Sunquist, Supervising Special Investigator of the State of California.

Attorney Steven Morris represented Respondent.

Oral and documentary evidence was received at the hearing, and the matter was submitted June 16, 2016.

Complainant brings this Accusation to revoke Respondent's restricted real estate broker license and mortgage loan originator endorsement. The mortgage loan endorsement is revoked. The restricted real estate broker license is also revoked, but Respondent may apply for a restricted salesperson license.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Statement of Issues solely in her official capacity.
2. Respondent obtained a real estate salesperson license on November 8, 1978. He obtained a real estate broker license on September 16, 1989. He obtained a mortgage loan originator endorsement on December 28, 2010. On February 19, 2016, Complainant brought this Accusation to discipline his licenses, and Respondent timely requested a hearing.

3. In the early 1990's, Respondent went into the business of "hard money" lending—real estate loans for borrowers who did not qualify for bank loans—acting as a middlemen between borrowers and lender-investors, both in putting borrowers together with investors to put loans in place, and in collecting the loan payments. The hard money lending industry has been largely extinguished by the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, and recent amendments to it.

Grounds for License Discipline

4. In a Stipulation and Agreement effective July 7, 2009, Respondent and the Department of Real Estate agreed to a 60-day suspension of his real estate broker license, stayed on condition that he pay a \$5,000 penalty and commit no cause for further license discipline within two years. The Stipulation was based on an October 16, 2008 Accusation alleging, among other things, that he and New Haven Financial, the corporation through which he did business, had maintained a deficient balance in a loan servicing trust account, failed to designate trust accounts as trust accounts, failed to notify lender-investors of a borrower's default, failed to keep separate trust fund beneficiary records and other required records, charged excessive points and fees to borrowers, and charged them more for credit reports than the credit reports cost, without disclosing the profit.

5. On March 27, 2013, in *Steiner v. New Haven Financial*, Los Angeles Superior Court case number LC078939, a judgment for more than \$800,000 was entered against Respondent, New Haven Financial and a third defendant, jointly and severally. Respondent described the action as a dispute over a failed construction loan. He is making payments on a five-year plan.

6. In a Stipulation and Agreement effective July 21, 2015, Respondent and the "Department of Real Estate" agreed that his real estate broker license would be revoked, but that a restricted broker license would be issued to him on conditions that included paying \$1,869 in costs of investigation and enforcement and paying costs of audits, which would be no less than \$6,669 and no more than \$13,338. The Stipulation was based on an August 9, 2011 Accusation alleging, among other things, lack of proper record keeping, arranging loans with excessive interest rates, and withdrawing money from an escrow trust account without written consent of all parties who paid money into the account. (The Department of Real Estate became the Bureau of Real Estate in July 2013; apparently the stipulation documentation was begun before then and not changed to reflect the name change.) His broker license remains restricted until 2019.

7. On November 3, 2015, Respondent submitted a renewal application for his mortgage loan originator endorsement. He gave three false answers to questions on the application:

a. He answered "no" to the question, "Do you have any unsatisfied judgments or liens against you?" The judgment described in Factual Finding 5 was (and remains) unsatisfied.

b. He answered “no” to the question, “has any state or federal regulatory agency... revoked your registration or license?” His broker license had been revoked less than four months earlier. (Factual Finding 6.)

c. He answered “no” to the question, “has any state or federal regulatory agency... entered an order concerning you in connection with any license?” Orders concerning his real estate broker license had been entered in 2009 and 2015. (Factual Findings 4 and 6.)

8. In a May 5, 2016 letter to the Bureau of Real Estate (Exhibit A), Respondent wrote that his inaccurate answers were “purely due to lack of focus and concentration when I filled out the form.” At hearing he testified that he carelessly left the answers on the renewal application the same as they had been on his first mortgage loan originator endorsement application, but the facts had changed in the meantime. His recollection seems inaccurate, since he would, or should, have answered yes in 2010 to the question about a state agency entering an order concerning his license. His testimony that he would not have willfully concealed the previous actions against his license because he knew they were of record, and the Bureau would certainly have found out about them, is more credible.

9. Respondent introduced letters from five persons who work with him — an information technology consultant, his personal accountant and his business accountant, a mortgage broker, and a paralegal whose firm used to represent Respondent and his company, and who has remained friends with Respondent. They write that Respondent is a person of integrity who fills a need in the community and cares about his customers, but has had problems with compliance issues, and has taken steps to ensure compliance. None of them show any knowledge that the present Accusation is based on false answers on Respondent’s mortgage loan originator renewal application.

10. Respondent had no record of license discipline before 2009.

11. Complainant introduced evidence that it incurred investigative costs of \$3,602.90, consisting of 46.95 hours of special investigators’ time at \$62 per hour and 8.65 hours of supervising special investigator’s time at \$80 per hour. This sum is reasonable, given the number of items to investigate. Complainant also introduced evidence that it incurred \$712 in costs of enforcement, consisting of 8 hours of staff attorney James R. Peel’s time at \$89 per hour. These costs are also reasonable.

LEGAL CONCLUSIONS

1. There is cause to revoke or suspend Respondent’s broker license and mortgage loan originator endorsement under Business and Professions Code section 10177,¹ as paragraph 7 of the Accusation alleges. Section 10177, subdivision (a) allows it to suspend or revoke the license if the licensee procured the license “by making a material misstatement of

¹ “Section” will refer to the Business and Professions Code.

fact in an application for a real estate license, license renewal, or reinstatement.” As paragraph 8 alleges, section 10166.051 allows the Bureau to suspend or revoke a mortgage loan originator license endorsement if an endorsement holder “withholds information or makes a material misstatement in an application for a license endorsement or license endorsement renewal.” Respondent made material misstatements of fact in his mortgage loan originator endorsement renewal application. (Factual Finding 7.)

2. The Accusation also alleges, as grounds for license discipline, violations of section 10177, subdivisions (d) (violation of “the Real Estate Law”), (f) (acting in a manner that would have warranted denial of a license application, or had a license denied, revoked or suspended), and (j) (fraud or dishonest dealing.) These allegations are vague, but it appears the references to subdivisions (d) and (f) allege that making a misstatement is a violation of the Real Estate Law, and constitutes acting in a manner that would warrant denial of a license application, which is circular and duplicative of the more specific provisions dealing specifically with misstatements on applications. The reference to subdivision (j) appears to characterize the misstatements on the application as willful fraud; Complainant has not carried its burden of proving this.

3. Respondent has been a real estate licensee for more than 37 years. He had no record of license discipline for the first three decades. More recently he has done less well. Twice in seven years the Bureau has imposed license discipline (Factual Findings 4 and 6), and at some point his long history as a licensee carries diminishing weight. To say that Complaint has not carried its burden of proving willful fraud, rather than sheer carelessness, is not to excuse Respondent’s conduct: real estate brokers and mortgage loan originators must be meticulous in their dealings; their job is to avoid carelessness. The evidence compels the conclusion that Respondent should not have a license that allows him to work unsupervised.

4. Complainant introduced evidence of reasonable costs of investigation and enforcement (Factual Finding 11) but the Accusation gives no notice that it would seek costs, and to allow costs without notice would deny Respondent due process. No cost award will be made.

ORDER

Respondent Lawrence Rabinoff’s mortgage loan originator endorsement is revoked. His real estate broker license is also revoked, but a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license 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 license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until two years after this Decision's effective date.

3. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 137000, and Sacramento, CA 95818-7000. The letter shall state the arrest date, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and be grounds to suspend or revoke that license.

4. Respondent shall submit with any application for license under a real estate employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing broker, on a form RE 552 (Rev. 4/88) approved by the Bureau of Real Estate, certifying:

(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 restricted licensee relating to activities for which a real estate license is required.

DATED: July 18, 2016

DocuSigned by:
Howard Posner
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HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings