

Flag Facts

FILED

OCT 04 2018

DEPT. OF REAL ESTATE
By *Sybil Danner*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:

ANNA SADOWSKA,

Respondent.

) DRE No. H-40746 LA
)
) OAH No. 2017090894
)
)

ORDER DENYING RECONSIDERATION

On, August 16, 2018 a Decision was rendered in the above-entitled matter. The Decision was to become effective on September 04, 2018, and was stayed by separate Order to October 4, 2018.

On September 18, 2018, Respondent petitioned for reconsideration of the Decision of 08/31/2018.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of August 16, 2018, and reconsideration is hereby denied.

IT IS SO ORDERED October 3, 2018.

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

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AUG 31 2018

DEPARTMENT OF REAL ESTATE

By *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:	)	DRE NO. H-40746 LA
ANNA SADOWSKA,	)	OAH NO. 2017090894
Respondent.	)	

ORDER STAYING EFFECTIVE DATE

On August 14, 2018, a Decision was rendered in the above-entitled matter to become effective September 4, 2018 .

IT IS HEREBY ORDERED that the effective date of September 4, 2018, is stayed for a period of 30 days to allow Respondent ANNA SADOWSKA to file a petition for reconsideration or consider Respondent's petition for reconsideration.

The Decision of August 14, 2018, shall become effective at 12 o' clock noon on October 4, 2018.

DATED: August 31, 2018

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

[Signature]

FILED

AUG 16 2018

DEPARTMENT OF REAL ESTATE

By *Suzanne M. [Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	DRE No. H-40746 LA
ANNA SADOWSKA and	)	
WEI ZHANG ALARID,	)	OAH No. 2017090894
	)	
<u>Respondents.</u>	)	

DECISION

The Proposed Decision dated July 2, 2018, 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 to the Proposed Decision:

Order, page 16, paragraph No. 2, line 1, "Within 30 days of the effective date of this order, respondents Anna Sadowska and Wei Zhang Alarid shall pay the Department at total of \$5,607.35 in investigation costs" is amended to read "Investigation Costs: Respondents shall pay the sum of \$5,607.35 in investigation costs, due and payable to the Department only as a condition precedent to reinstatement of their licenses: Respondent Anna Sadowska shall pay the Department the amount of \$2,803.68 in investigation costs only as a condition precedent to reinstatement of her license, and Respondent Wei Zhang Alarid shall pay the Department the amount of \$2,803.68 in investigation costs only as a condition precedent to reinstatement of her license. Enforcement Costs: Respondent Anna Sadowska shall pay the sum of \$1,012.37 in enforcement costs, due and payable to the Department only as a condition precedent to reinstatement of her license. Respondent Wei Zhang Alarid shall pay the sum of \$932.27 in enforcement costs, due and payable to the Department only as a condition precedent to

reinstatement of her license.”

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department’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 04 2018.

IT IS SO ORDERED August 14, 2018

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANNA SADOWSKA and WEI ZHANG
ALARID,

Respondents.

Case No. H-40746 LA

OAH No. 2017090894

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on March 26 and 27, 2018.

Julie L. To, Counsel, Department of Real Estate (Department),¹ represented complainant Maria Suarez, a Supervising Special Investigator of the Department.

R. Grace Rodriguez, Esq., represented respondent Anna Sadowska.

Jamie Jiyeon Kim, Esq., LK Professional Law Group, represented respondent Wei Zhang Alarid.

The hearing concluded on March 27, 2018. In an order dated April 24, 2018, the administrative law judge reopened the record for briefing on certain issues. Complainant filed a brief on May 4, 2018 (exhibit 19), and Alarid and Sadowska submitted briefs to the Department on May 17 and 24, 2018, respectively (exhibits P and Q). Complainant was given until May 31, 2018, to reply to respondents' briefs, but did not.

The matter was submitted on May 31, 2018.

SUMMARY

Complainant requests that the Real Estate Commissioner (Commissioner) discipline Sadowska's and Alarid's real estate licenses, alleging they violated the Real Estate Law

¹ The Bureau of Real Estate became the Department of Real Estate effective July 1, 2018.

(Bus. & Prof. Code, § 10000)² and supporting regulations in a never-finished loan modification for two homeowners, who paid \$7,910 but received nothing in return. Complainant also alleges Alarid mishandled trust funds and violated the Department's address reporting requirements, and that Sadowska misrepresented facts, made false promises, and engaged in fraud or dishonest dealing. Alarid admits an address reporting violation, but she and Sadowska otherwise deny wrongdoing. Despite the denials, clear and convincing evidence established cause to revoke both Sadowska's and Alarid's real estate licenses.

FACTUAL FINDINGS

Background

SADOWSKA'S LICENSE AND WORK HISTORY

1. Sadowska has had a broker's license since December 20, 2014, license identification number 01701469. Before becoming a broker, she had a salesperson's license, which the Department originally issued on July 28, 2005. Since December 21, 2015, Sadowska has also been licensed as the officer of corporate licensee Crissana Luxury Real Estate, Inc., license identification number 01994411. Her broker's license will expire on December 9, 2018, and her officer's license will expire on December 20, 2019, unless renewed.
2. Sadowska had several employing brokers while licensed as a salesperson, including three between October 2012 and December 2014: Earth & Above, Inc., American Dream Realty, Inc., and Chelsea Real Estate Group, Inc. In 2012, she also began working for a corporate licensee named American Financial Realty and Mortgage Company (Amerifi), license identification number 01522899, without reporting the affiliation to the Department. Amerifi operated under the fictitious business names Amerifi Home Loans, Amerifi Mortgage, and Amerifi Realty, among others, and its designated officer was broker Alen Aivazian, license identification number 01365057. Both Amerifi and Aivazian surrendered their licenses to the Department in October 2015.
3. Amerifi offered loan modification services to homeowners, and Sadowska worked for Amerifi on a commission basis. An "Independent Contractor & Compensation Agreement" from 2013 stated Sadowska would "generate potential clients to refer to Amerifi Mortgage Los Angeles for a commission per successful transaction" of "50% on all referrals minus Processing fees. [¶] 1. Modification – 1500 [¶] 2. Modification 1st and 2nd loan = 2250.00 [¶] 3. Second Loan settlements – 1500.00." (Exhibit M.) Income statements from the company showed Sadowska received compensation of \$3,660 in 2012 and \$61,841 in 2013. Her compensation from Amerifi in subsequent years was not established.

² Undesignated statutory references are to the Business and Professions Code.

ALARID'S LICENSE AND WORK HISTORY

4. Alarid has had a broker's license since November 19, 2016, license identification number 01885589. Before that, she had a salesperson's license, which the Department originally issued on August 9, 2010. Her broker's license will expire on November 18, 2020, unless renewed.

5. While licensed as a salesperson, Alarid reported working since April 2011 for corporate licensee Highland Investment Group, Inc., and having a mailing address of 411 East Huntington Drive, Suite 215, Arcadia, California 91006. Alarid worked as a salesperson for that company until she became a broker, apart from a one-month period in early 2015. When Alarid became a broker, she reported a main office and mailing address of 17128 Colima Road, #203, Hacienda Heights, California 91745. On January 23, 2017, she added the fictitious business name "AZ Investments" to her license. Alarid had not reported any other fictitious business name to the Department before that.

Request to Sadowska for loan modification assistance

6. In May 2014, homeowner Marilyn P. (M.P.) anticipated an inability to keep paying her \$2,730 per month first mortgage on the home she shared with her husband in Corona, California. The couple was not delinquent on the mortgage, but wanted to reduce their monthly payments and interest rate. M.P. contacted Sadowska because Sadowska had worked on a successful loan modification for M.P.'s sister. Expressing optimism she could help, Sadowska stated she was working at Amerifi with Aivazian and a foreclosure expert named Rodger Mansourian. Sadowska described Aivazian as an attorney, although he is not licensed as one in California.

7. At Sadowska's request, M.P. and her husband signed an "Authorization to Represent Form" on May 23, 2014, on Amerifi Mortgage letterhead. The agreement gave Wells Fargo – the couple's mortgage lender – permission to discuss loan modification with Amerifi and 10 "Specific Agents" of the company, including Aivazian and two persons with the surname Mansourian (Vache and Vahe). (Exhibit 10, p. 14.) Neither Sadowska nor Alarid was on the list of "Specific Agents." Sadowska also told M.P. she would have to pay \$7,910 to a bank account that Sadowska would give to M.P. later.

8. M.P. and her husband stopped making mortgage payments and did not reply to subsequent calls and letters from Wells Fargo, instead forwarding all written communications to Sadowska. M.P. testified she was following Sadowska's instructions, while Sadowska denied telling M.P. to stop making payments. In June 2014, Sadowska had M.P. and her husband sign a three-page "Terms and Conditions – Fee Agreement" between M.P. and "Ideal Financial Inc. dba American Financial Resolution." Sadowska told M.P. that a company name change for Amerifi required a new contract, although the company remained the same. The agreement included a condition that "CLIENT agrees to pay COMPANY \$7,910 for the successful closing of the loan modification. The fee will be paid

by CLIENT to COMPANY upon receipt, review and acceptance of a change in terms/loan modification offer.” (Exhibit 10, pp. 15-17.)

9. In late August 2014, Sadowska had M.P. and her husband sign two more agreements on “Cornerstone Law Group” letterhead, explaining that another name change for Amerifi required them. The agreements did not have an attorney’s name or state bar number on them, and “Cornerstone Law Group” is not a Department licensee or fictitious business name that was associated with Amerifi’s license. A “Retainer Fee Agreement” included a payment provision stating “Cornerstone shall be entitled to \$7,910.00 for . . . ‘successful Loan Restructure performance’ . . .,” which was defined as client acceptance of a loan restructuring. It did not include a completion date for that performance. The Retainer Fee Agreement further stated that “Cornerstone shall not receive any compensation until after the Client accepts a Loan Restructure Offer. If Client does not accept a Loan Restructure Offer, than [sic] no fee shall be due to Cornerstone.” (Exhibit 10, pp. 18-21.) An accompanying “Authorization to Represent” agreement designated Cornerstone Law Group as the couple’s designated agent for attempting to negotiate a loan modification. (*Id.* at p. 22)

10. In late October 2014, M.P. received a “Conditional Approval” letter signed “The Cornerstone Team,” with an invoice for \$7,910 for “Loan Modification Contingency Services Fee Agreement.” According to Sadowska, someone at Amerifi sent the documents, but Sadowska herself did not. The letter stated M.P. and her husband “have been *conditionally approved* for a loan modification,” but did not describe on what terms. Instead, the letter promised “A client representative will go over details with you shortly,” and stated “This approval may be subject to receipt and processing of the following *applicable* items: [¶] • Investor Sign off. [¶] • Meet all preconditions of Lender document requests. [¶] • Cornerstone Contracted Fee Payment [¶] • 3 Consecutive Trial Payments to be made on or before due dates. [¶] • Attend Credit counseling.” It further stated that after execution of the applicable items, M.P. and her husband would receive a three-month trial offer from their lender, followed by a final loan modification offer after the trial period. (Exhibit 10, p. 23.) The invoice described two options to make \$7,910 payment: (1) mail a certified or cashier’s check made out to “Cornerstone Network” to 17128 Colima Road, #512, Hacienda Heights, CA 91745, or (2) a direct deposit to Citibank account number ###-##2-109. (*Id.* at p. 24.) It also stated: “In the event the 3 month trial modification is not converted into a final loan modification and Cornerstone is unable to obtain any other loan modification offer that the Client chooses to accept, Cornerstone shall offer Client a 100% full refund within 3 days of Client written request. How-ever [sic] if the Client defaults on the 3 month trial offer, then it shall be deemed that the loan modification contracted fee shall be considered earned by Cornerstone and no refund shall be due.” (*Ibid.*)

11. When M.P. asked why the payee was “Cornerstone Network,” Sadowska explained that was the name of the trust account for Amerifi. Sadowska also stated the attorney needed the money before they could forward the loan modification package, and that the money would be returned if the proposed modification was unsatisfactory. On or about October 27, 2014, M.P. mailed a \$7,910 cashier’s check payable to Cornerstone

Network to the address on the invoice, which was the same as Alarid's address of record with the Department (17128 Colima Road, Hacienda Heights, CA), but with a different box number (#512 instead of #203).

12. M.P. and her husband never obtained a loan modification, and Wells Fargo started sending foreclosure notices. Sadowska testified M.P. initially accepted a loan modification offer in October 2014 but reconsidered, while M.P. asserted she never accepted because the couple's monthly payments would have been higher than before. M.P.'s version of events was more persuasive, given the lack of documentary evidence of acceptance. Sadowska and M.P. agreed there was a second loan modification offer in about July 2015 that M.P. did not accept. M.P. testified the second offer would also have resulted in higher monthly payments.

13. With a foreclosure sale approaching and no more loan modification offers, Sadowska sent M.P. a Residential Listing Agreement in November 2015 proposing to list the couple's home for sale as their broker. M.P. did not agree to the listing and was upset because she had never told Sadowska she wanted to sell it. No longer trusting Sadowska, M.P. asked for a refund of the \$7,910, but Sadowska replied she did not have the money herself.

14. M.P. hired an attorney who demanded a refund from Sadowska in June 2016, but Sadowska replied she was just a customer service representative and did not personally receive the funds. Sadowska suggested M.P. direct her refund request to Amerifi or Cornerstone Law Group. M.P. called the telephone number on the Cornerstone Law Group documents, but it had been disconnected. She never made contact with anyone at Amerifi or Cornerstone Law Group other than Sadowska. M.P. and her husband did not receive a refund, and filed a complaint with the Department in early October 2016.

Complaint Investigation

15. The Department investigated the complaint and subpoenaed bank records for the account listed on the Cornerstone Law Group invoice (Citibank account number ###-##2-109). The bank records showed respondent Alarid and non-party Steven Alarid opened the account in September 2014 under the fictitious business name "Cornerstone Network," with an address of 411 E. Huntington Drive, Unit 107, Arcadia, California 91006. The account was not a trust account, and respondent Alarid was listed as the primary contact and sole signatory. The records also showed the deposit of M.P.'s cashier's check into the account on October 31, 2014, and the deposits of other checks and money orders payable to "Cornerstone Network," "Cornerstone Mediation Network," "Cornerstone Legal," "Cornerstone Law," "Cornerstone Law Group," and other variants of the "Cornerstone" name, none of which appeared on Alarid's salesperson's license. Some of those other checks and money orders included notations that they were for "Loan Modification Services," "Approved Loan Modification Service Fee," and similar items. There were also cash withdrawals from the account, checks written from the account to Alarid herself, and debit card purchases at restaurants and stores. (Exhibit 14.)

16. The Department also determined that 17128 Colima Road, #512, Hacienda Heights, California – the mailing address for payment on the Cornerstone Law Group invoice – was a mailbox at a UPS store. Alarid’s address of record with the Department had the same street address, but a different mailbox number (#203). The Department subpoenaed records from the UPS store, and received records confirming Alarid’s rental of both mailboxes.

Current status

17. As of the hearing date, M.P. and her husband had not received a refund of the \$7,910 that they paid. M.P.’s home was still in foreclosure, but Wells Fargo had still not sold it. She has not made mortgage payments on it since 2015.

Accusation and Jurisdiction

18. On August 10, 2017, complainant filed an Accusation in her official capacity requesting that the Commissioner take disciplinary action against Sadowska’s and Alarid’s licenses. The Accusation alleged Sadowska and Alarid violated the Real Estate Law and supporting regulations in the failed loan modification for M.P. and her husband. It also alleged that Alarid violated the Department’s trust fund handling and address reporting requirements, and that Sadowska made misrepresentations and false promises and engaged in fraud or dishonest dealing.

19. Sadowska submitted a timely notice of defense.

20. Alarid did not submit a timely notice of defense, so the Commissioner issued a default decision revoking her license. On October 31, 2017, she requested reconsideration of the decision, and the Commissioner set aside the default. Alarid then submitted a notice of defense dated November 13, 2017.

Respondents’ contentions

21. Sadowska contends she treated M.P. and her husband fairly, and that nothing she did for them required a real estate license. At the hearing, she denied owning, operating, or controlling Amerifi, and asserted she was simply a client representative answering leads and incoming calls for Amerifi, not someone acting as a salesperson or broker. Sadowska testified she never made contact with Wells Fargo or negotiated modified loan terms for M.P. or her husband. She also testified she never worked for Ideal Financial Inc. or Cornerstone Law Group, describing them as “affiliated” or “sister companies” of Amerifi, not as different names for Amerifi as she told M.P. Sadowska also denied receiving any payment for the work she did for M.P. and her husband, and denied knowing who Alarid was. In addition, Sadowska testified M.P. never asked for a refund until M.P. hired a lawyer, despite Sadowska urging M.P. to put a refund request in writing beforehand.

22. Alarid contends she was simply performing a check-cashing service for someone else using her bank account. According to her testimony, Alarid deposited checks into her account for about 10 months for a person named "Sam K." at "Cornerstone Mediation Network" – another entity without a Department license – who told her the company could not open its own account. After depositing the checks, Alarid would hold the money for three or four days and then pay it out to Sam K., minus a service fee. According to Alarid, she handled M.P.'s check in this manner, but had no role in any work for M.P. and her husband. Alarid testified she did not know Sadowska or Aivazian, and denied working for Amerifi, Ideal Financial, Inc., or Cornerstone Law Group. She acknowledged an error in reporting a UPS mailbox as her business address, but otherwise denied wrongdoing. As of the hearing date, her address of record was unchanged.

Discussion of evidence

23. The evidence was clear and convincing that Amerifi and Cornerstone Law Group (if different than Amerifi) dealt dishonestly with M.P. and her husband. The multiple contracts, changing company names, invoice for up-front payment, handling of the payment through Alarid's "Cornerstone Network" account, and outcome for the couple – a loss of \$7,910, with no home loan modification – all support this finding.

24. The evidence was less clear as to Sadowska's personal state of mind. While she was M.P.'s point of contact at Amerifi, the evidence did not foreclose the possibility Sadowska believed what she told M.P., and thought Aivazian and others at Amerifi or Cornerstone Law Group were dealing fairly with the couple. Sadowska's denial of personal dishonesty in the transaction, while not determinative, was sufficiently persuasive to avoid a finding that she was. She may have been, but the evidence was not clear and convincing enough for such a finding. However, the absence of that finding is not a defense to discipline for Sadowska's multiple violations of the Real Estate Law in the transaction, as described below.

25. As to Alarid, the evidence supports a finding she had no role in the transaction for M.P. and her husband, apart from depositing their check. But the evidence established that Alarid deposited those and other funds from loan modification transactions in a non-trust bank account, without any apparent involvement of her broker of record (Highland Investment Group, Inc.) This also violated the Real Estate Law in multiple respects, as described below.

Costs

26. Complainant provided statements certifying that the Department incurred \$5,607.35 in investigation costs, plus \$1,012.37 in enforcement costs attributable to Sadowska and \$932.27 in enforcement costs attributable to Alarid.

LEGAL CONCLUSIONS

Legal Standards

1. The Commissioner may suspend or revoke the license of a person who has “[w]illfully disregarded or violated” the Real Estate Law or its supporting regulations (§ 10177, subd. (d)), or engaged in “any . . . conduct . . . which constitutes fraud or dishonest dealing. (§§ 10176, subd. (i), 10177, subd. (j).) The Commissioner may also suspend or revoke a real estate license “at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following: [¶] (a) Making any substantial misrepresentation. [¶] (b) Making any false promises of a character likely to influence, persuade, or induce. [¶] (c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.” (§ 10176, subds. (a)-(c).)

2. “‘Willfully’ as used in section 10177, subdivision (d) does not require an intent to violate the law, only an intent to engage in the act or conduct prohibited by the statute is required.” (*Milner v. Fox* (1980) 102 Cal.App.3d 567, 573, fn. 9.) The disciplinary provision “protect[s] the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman.” (*Handeland v. Dept. of Real Estate* (1976) 58 Cal.App.3d 513, 518.) “An interpretation of section 10177(d) that does not impose disciplinary sanctions upon a salesman when there is a clear and undisputed violation simply because the salesman asserts that the violation was unintentional does, in fact, emasculate the law since it places the burden of enforcement upon the buyer instead of on the Department as intended by the Legislature.” (*Ibid.*)

3. Complainant bears the burden of proving the alleged grounds for discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457; see also *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) Clear and convincing evidence “requires a finding of high probability,” and has been described as “requiring that the evidence be “so clear as to leave no substantial doubt”; “sufficiently strong to command the unhesitating assent of every reasonable mind.” [Citation.]” (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

Causes for Discipline

4. Complainant alleges some causes for discipline against both Sadowska and Alarid, and some against just one or the other. Clear and convincing evidence established most of them, as described below.

ADVANCE FEES (SADOWSKA AND ALARID)

5. First, complainant alleges Sadowska and Alarid collected advance fees without submitting the form of agreement used to collect it to the Commissioner beforehand as

required. (Accusation, pp. 26-27, ¶¶ 45-46.) Subject to exceptions not applicable here, "[t]he term 'advance fee,' . . . is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, . . . before fully completing the service the licensee contracted to perform or represented would be performed." (§ 10026, subd. (a).) "A person who proposes to collect an advance fee . . . shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use." (Cal. Code Regs., tit. 10, § 2970, subd. (a).) Failure to do so "shall constitute grounds for disciplinary action" (§ 10085.)

6. Here, the October 2014 invoice from Cornerstone Law Group demanded payment before full completion of the promised "'successful Loan Restructure performance,'" meaning client acceptance of a loan modification. (Factual Findings 9-10.) M.P. and her husband had not accepted a loan modification when they were invoiced, and had not even received the details of an offer. Instead, the invoice accompanied a "Conditional Approval" letter that contained a limited initial description of an offer, with the promise that a client representative would go over the details with her later. (Factual Finding 10.)

7. In addition, "Cornerstone Network" – i.e., Alarid – received payment before completion of the promised service. M.P. paid the invoice within about a week of receiving it, but had not accepted a loan modification offer, and in fact never did. (Factual Findings 12.) Sadowska's assertion that M.P. did accept a loan modification before paying was unpersuasive as lacking in documentary support.

8. Furthermore, the promised "'successful Loan Restructure performance'" was a "service[] requiring a license. . . ." (§ 10026, subd. (a).) Section 10131 provides, in relevant part: "A real estate broker . . . is a person who, for a compensation or in expectation of a compensation, does or negotiates to do one or more of the following acts for another or others: [¶] . . . [¶] (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs 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." (§ 10131, subd. (d).) Section 10131.2 provides: "A real estate broker . . . is also a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon." The promised service was negotiating a home loan modification for M.P. and her husband, and the fee collected was "in connection with . . . employment undertaken . . . to obtain a loan" on their home. (§ 10131.2.)

9. Therefore, the payment was an advance fee under section 10026, subdivision (a), and the form of agreement used to collect it had to be submitted to the Commissioner

beforehand. (§ 10085.) Complainant did not present direct evidence of non-submission (e.g., from a custodian of records), but the record nonetheless establishes a “high probability” that no such submission occurred. (*In re Angelia P.*, *supra*, 28 Cal.3d at p. 919.)

“Cornerstone Law Group” is not an entity licensed or a name affiliated with Amerifi in Department records. (Factual Finding 9.) Its Retainer Fee Agreement was not designated as an advance fee agreement and did not include a right to payment of an advance fee, although one was ultimately claimed and paid. The agreement also included no definite date for full performance of the services promised (*ibid.*), as required for approval. (Cal. Code Regs., tit. 10, § 2970, subd. (b)(6).) These facts suggest the form of Retainer Fee Agreement was not submitted to the Commissioner beforehand, and neither respondent asserted otherwise.

10. Sadowska asserts she is not subject to discipline because she did not receive the payment herself. But Sadowska stated M.P. had to make the payment to start the loan modification process (Factual Finding 11), and thus “claimed” and “demanded” the fee within the meaning of section 10026, subdivision (a). Sadowska also asserts she is not subject to discipline because she was just a customer service representative who did not perform acts requiring a license. But she was M.P.’s only point of contact at Amerifi, and her commission-splitting agreement with Amerifi undermines her assertion. (Factual Finding 3.) Sadowska was soliciting homeowners to hire Amerifi for loan modification services, and convinced M.P. and her husband to do so and pay an advance fee to “Cornerstone Network,” i.e., Alarid. These activities required a real estate license. (§§ 10131, 10131.2.)

11. Alarid asserts she simply performed a check-cashing service for “Sam K.” at “Cornerstone Mediation Network,” and is therefore not subject to discipline. But she voluntarily accepted and deposited an unauthorized advance fee for real estate activity into her bank account, establishing a violation. The Commissioner may impose license discipline on Alarid even if the violation was unintentional. (*Handeland v. Dept. of Real Estate*, *supra*, 58 Cal.App.3d at p. 518.)

12. Accordingly, the Commissioner may discipline the licenses of Sadowska and Alarid for an advance fee violation.

UNLICENSED ACTIVITIES (SADOWSKA AND ALARID)

13. Second, complainant alleges Sadowska and Alarid violated the Real Estate Law by performing acts requiring a license outside the scope of their employment as real estate salespersons. (Accusation, p. 27, ¶ 47.) Section 10132 provides, in relevant part: “A real estate salesperson . . . is 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 [and] . . . 10131.2” The acts set forth in sections 10131 and 10131.2 include soliciting homeowners for loan modification services and claiming, demanding, or collecting advance fees, as described above.

14. A salesperson may not perform such acts independently, or for anyone other than the broker under whom he or she is licensed. "When a salesman's application for a license is granted, the license goes into possession of the broker-employer and there remains until cancellation or until the salesman leaves that broker's employ. [Citation.]" (*People v. Asuncion* (1984) 152 Cal.App.3d 422, 425.) He or she "can act only for, on behalf of, and in place of the broker under whom he is licensed, and . . . his acts are limited to those which he does and performs as an agent for such broker. [Citation.]" (*Gipson v. Davis Realty Co.* (1963) 215 Cal.App.2d 190, 206-207; see also *People v. Asuncion, supra*, 152 Cal.App.3d at p. 425; *Resnik v. Anderson & Miles* (1980) 109 Cal.App.3d 569, 572; *Grand v. Griesinger* (1958) 160 Cal.App.2d 397, 405.)

15. Despite these restrictions, Sadowska worked for Amerifi on a never-realized home loan modification for M.P. and her husband, resulting in a \$7,910 advance fee payment in October 2014. Amerifi was not Sadowska's broker of record (see Factual Finding 2), and thus Sadowska's salesperson license did not authorize her to perform those acts. Sadowska's assertion that she did not perform any acts requiring licensure was unpersuasive, as described above in Legal Conclusion 10.

16. Alarid accepted and deposited the \$7,910 advance fee payment while licensed as a salesperson, and no evidence suggests she did so for her broker of record (Highland Investment Group, Inc.). To the contrary, Alarid testified she did so for "Sam K." at "Cornerstone Medication Network," an unlicensed entity, in return for a service fee for herself. (Factual Finding 22.) Her salesperson license did not authorize her to take these actions independently of her broker of record.

17. Therefore, the Commissioner may take disciplinary action against Sadowska and Alarid for unlicensed activity.

UNLAWFUL EMPLOYMENT OR PAYMENT OF COMPENSATION (SADOWSKA AND ALARID)

18. Third, under the heading "Unlawful Employment or Payment of Compensation," complainant alleges Sadowska and Alarid "received compensation for activities requiring a real estate license from a source other than the broker(s) under which they were at the time licensed." (Accusation, p. 28, ¶ 48.) Under section 10137, "[n]o real estate salesperson shall be employed by or accept compensation for activity requiring a real estate license from any person other than the broker under whom he or she is at the time licensed."

19. While licensed as a salesperson, Sadowska was employed by Amerifi for activity requiring a real estate license, even though Amerifi was not her broker of record. "Employ[ment]" for purposes of section 10137 includes work as an independent contractor relationship (§ 10032), and Sadowska had an independent contractor relationship with Amerifi, working for a commission per successful transaction. (Factual Finding 3.) While Sadowska denied receiving compensation for her work for M.P. and her husband, section

10137 authorizes discipline for unlawful employment *or* acceptance of compensation by a salesperson.³

20. Alarid accepted compensation for activity requiring a real estate license independently of her broker of record, in the form of the \$7,910 advance fee from M.P. and her husband. (Factual Finding 15.) Her lack of involvement in the underlying transaction does not negate the violation. Her later payment of that amount to "Sam K.," minus a service fee, also does not negate it.

21. Therefore, the Commissioner may discipline the licenses of Sadowska and Alarid for unlawful employment or acceptance of compensation.

TRUST FUND HANDLING (ALARID ONLY)

22. Fourth, complainant alleges Alarid mishandled trust funds and made unauthorized withdrawals of trust funds. (Accusation, p. 28, ¶ 49.) "A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person." (§ 10145, subd. (a)(1).) "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." (§ 10145, subd. (c).)

23. The \$7,910 payment from M.P. and her husband was made in connection with a loan modification transaction subject to the Real Estate Law. The funds did not belong to Alarid, but she nonetheless deposited them into her non-trust "Cornerstone Network" account from which she made personal withdrawals. The same is true of the other checks and money orders she deposited with notations of "Loan Modification Services," "Approved Loan Modification Service Fee," and the like. (Factual Finding 15.) There is a high probability those other deposits were also funds belonging to others in connection with transactions subject to the Real Estate Law. No evidence suggested she accepted the funds on behalf of her broker of record.

24. Therefore, the Commissioner may take disciplinary action against Alarid for mishandling trust funds.

³ Sadowska's reported compensation from Amerifi in 2012 and 2013 is too remote in time to support discipline under the applicable three-year statute of limitations. (§ 10101.).

FICTITIOUS BUSINESS NAMES (ALARID ONLY)

25. Fifth, complainant alleges Alarid used fictitious business names to conduct activity requiring a license without first obtaining a Department license bearing those names. "A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name." (Cal. Code Regs., tit. 10, § 2731, subd. (a).) "Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk" (§ 10159.5, subd. (a)(1).) "A salesperson using a fictitious business name authorized by subdivision (a), shall use that name only as permitted by his or her responsible broker." (§ 10159.5, subd. (b)(1).)

27. Alarid did not report using any fictitious business names as a salesperson, and only reported using one fictitious business name (AZ Investments) since January 23, 2017, after she became a broker. (Factual Finding 5.) Nonetheless, Alarid opened a bank account in September 2014 under the fictitious business name "Cornerstone Network," and received funds belonging to others in real estate transactions under that name and variants of it, including the \$7,910 cashier's check from M.P. and her husband. (Factual Finding 15.) Therefore, the Commissioner may take disciplinary action against Alarid for a fictitious business name violation.

PLACE OF BUSINESS (ALARID ONLY)

28. Sixth, complainant alleges Alarid did not maintain a valid address of record on file with the Department. (Accusation, p. 29, ¶ 51.) "Every licensed real estate broker shall have and maintain a definite place of business in the State of California that serves as his or her office for the transaction of business. This office shall be the place where his or her license is displayed and where personal consultations with clients are held." (§ 10162, subd. (a).) The broker must maintain on file with the Commissioner the address of that "principal place of business for brokerage activities." (Cal. Code Regs., tit. 10, § 2715.)

29. Alarid received her real estate broker's license on November 19, 2016, and reported her main office and mailing address at that time as 17128 Colima Road, #203, Hacienda Heights, California 91745. (Factual Finding 5.) But that address was a mailbox at a UPS store, not an office for the transaction of business, or a place where she could display her license or hold personal consultations. (Factual Finding 16.) Alarid acknowledged the address reporting violation at the hearing, but still had not corrected it as of the hearing date. Therefore, the Commissioner may take disciplinary action against her for the address reporting violation.

BRANCH OFFICES (ALARID ONLY)

30. Seventh, complainant alleges Alarid performed acts requiring a real estate license at branch offices without first procuring a license from the Department for those

branch offices, in violation of section 10163. (Accusation, p. 29, ¶ 52.) The alleged branch offices were: (1) 17128 Colima Road, #512, Hacienda Heights, California (one of Alarid's two UPS mailboxes), and (2) 411 E. Huntington Drive, Unit 107, Arcadia, California (the address on Alarid's bank account and her former address of record with the Department). Section 10163 provides: "If the applicant for a real estate broker's license maintains more than one place of business within the State he shall apply for and procure an additional license for each branch office so maintained by him. Every such application shall state the name of the person and the location of the place or places of business for which such license is desired. The commissioner may determine whether or not a real estate broker is doing a real estate brokerage business at or from any particular location which requires him to have a branch office license." (§ 10163.)

31. Section 10163 refers only to brokers, not salespersons, and the evidence presented about Alarid's use of these addresses precedes her licensure as a broker. Alarid became a broker on November 19, 2016, and complainant presented no evidence of her use of those addresses after that date, either as branch offices or otherwise. Therefore, complainant did not present sufficient evidence to take disciplinary action against Alarid for a violation of section 10163.

SUBSTANTIAL MISREPRESENTATIONS, FALSE PROMISES, AND FRAUD OR DISHONEST DEALING (SADOWSKA ONLY)

32. The eighth, ninth, and tenth causes for discipline allege Sadowska made substantial misrepresentations and false promises while engaging in the business of or acting in the capacity of a real estate broker, and further engaged in fraud or dishonest dealing. (Accusation, pp. 29-30, ¶¶ 53-55.) Dishonest dealing "may encompass more than just fraud or deception," but "necessarily includes the element of bad faith, which means fraud, deception, betrayal, faithlessness." . . . It 'denotes an absence of integrity.' [Citations.]" (*Chodur v. Edmonds* (1985) 174 Cal.App.3d 565, 572.)

33. An accusation for disciplinary action for substantial misrepresentations, false promises, or fraud or dishonest dealing must be filed within one year after discovery by the aggrieved party or three years after the occurrence thereof, or, whichever is later. (§ 10101.) Here, M.P. suspected wrongdoing by Sadowska and Amerifi in November 2015 and hired an attorney in June 2016 – well over a year before complainant filed the Accusation on August 10, 2017. (Factual Finding 14.) Therefore, the three-year period applies, and the alleged substantial misrepresentations, false promises, and fraud or dishonest dealing must have occurred within three years of the Accusation's filing on August 10, 2017.

34. The evidence established a substantial misrepresentation during this period about what "Cornerstone Network" was. After receiving the payment invoice in October 2014, M.P. asked why the payee was "Cornerstone Network," and Sadowska explained that was the name of Amerifi's trust account. (Factual Finding 11.) But Cornerstone Network was Alarid's fictitious business name, and the account was not a trust account. In reality, the payment from M.P. and her husband was never placed in a trust account. The Commissioner

may take disciplinary action against Sadowska for this substantial misrepresentation under section 10176, subdivision (a).

35. Regarding false promises, complainant's post-hearing brief notes Sadowska assured M.P. several times that M.P.'s money would be refunded if she was unsatisfied, which she was. (See Exhibit 19.) Furthermore, some of those assurances occurred within three years of the Accusation's filing. But the evidence was not clear and convincing enough to establish that Sadowska believed these promises were false when she made them (Factual Finding 24), and a promise is not necessarily false just because the promised event does not occur. Therefore, complainant did not present sufficient evidence to support disciplinary action for a false promise under section 10176, subdivision (b).

36. Similarly, complainant did not present sufficient evidence to establish cause to discipline Sadowska for fraud or dishonest dealing, for the reasons described in Factual Finding 24. The evidence of Sadowska's state of mind was not clear and convincing enough to establish she was personally dishonest or lacking in integrity. She may have been, but that possibility is not enough to support discipline for fraud or dishonest dealing.

Level of Discipline

37. The primary purpose of administrative license proceedings is to protect the public, and the object of discipline is not to punish the licensee. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817; see also *Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448-450.)

38. As to Sadowska, her dealings with M.P. and her husband violated the Real Estate Law in multiple respects. She performed real estate activity for an employer who was not her broker of record, including an advance fee violation, and made a substantial misrepresentation about how the advance fee would be held. Her conduct was in disregard of the laws requiring a salesperson to act only as an agent for his or her employing broker. Sadowska is now a broker, and her conduct as a salesperson raises serious concerns about how she will handle the increased responsibilities and independence of a broker. Whether or not she was personally dishonest, her violations were serious and contributed to a significant monetary loss to homeowners. At the same time, she denied all wrongdoing, displaying no insight into her violations, and presented no evidence of rehabilitation. Absent evidence of such insight and rehabilitation, protection of the public requires revocation of her license.

39. Alarid's multiple violations raise similar concerns as the violations of Sadowska. Alarid also performed real estate activity outside the scope of employment by her broker of record, using her "Cornerstone Network" checking account to deposit real estate funds belonging to others, including an unauthorized advance fee from M.P. and her husband. Alarid's mishandling of real estate trust funds was particularly serious, and evidenced a lack of understanding of the strict requirements for handling such funds. Alarid's violations also contributed to the monetary loss of M.P. and her husband, even though Alarid herself was not involved in the underlying loan modification transaction. Like

Sadowska, Alarid is also now a broker with increased responsibilities and independence, but displayed no insight into her violations and offered no rehabilitation evidence. Alarid's violations suggest public protection is at risk with Alarid in that new role. Therefore, her real estate license should be revoked as well.

Costs

40. Complainant requests \$5,607.35 in investigation costs, plus \$1,012.37 in enforcement costs attributable to Sadowska and \$932.27 in prosecution costs attributable to Alarid. (Factual Finding 26.) "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, 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." (§ 10106, subd. (a).)

41. Complainant offered certified copies of the Department's costs, which are prima facie evidence the costs are reasonable. (§ 10106, subd. (c).) Respondents presented no evidence that they are not. Respondents also did not obtain a reduction in the severity of the discipline imposed from the maximum discipline requested in the Accusation (i.e., revocation), or assert a colorable challenge to discipline. Their subjective belief in the merits of their position does not justify a reduced cost award. In addition, the Department's investigation was not disproportionately large compared to the proven violations, and Sadowska and Alarid did not argue they will be financially unable to pay the Department's costs. Therefore, they will be ordered to pay them. (See *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.)

ORDER

All licenses and licensing rights of respondents Anna Sadowska and Wei Zhang Alarid under the Real Estate Law are revoked.

Within 30 days of the effective date of this order, respondents Anna Sadowska and Wei Zhang Alarid shall pay the Department a total of \$5,607.35 in investigation costs.

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Within 30 days of the effective date of this order, respondent Anna Sadowska shall also pay the Department \$1,012.37 in enforcement costs, and respondent Wei Zhang Alarid shall pay the Department \$932.27 in enforcement costs.

DATED: July 2, 2018

DocuSigned by:

Thomas Heller

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THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

FILED
AUG 16 2018

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	DRE No. H-40746 LA
ANNA SADOWSKA and	)	
WEI ZHANG ALARID,	)	OAH No. 2017090894
	)	
Respondents.	)	

DECISION

The Proposed Decision dated July 2, 2018, 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 to the Proposed Decision:

Order, page 16, paragraph No. 2, line 1, "Within 30 days of the effective date of this order, respondents Anna Sadowska and Wei Zhang Alarid shall pay the Department at total of \$5,607.35 in investigation costs" is amended to read "Investigation Costs: Respondents shall pay the sum of \$5,607.35 in investigation costs, due and payable to the Department only as a condition precedent to reinstatement of their licenses: Respondent Anna Sadowska shall pay the Department the amount of \$2,803.68 in investigation costs only as a condition precedent to reinstatement of her license, and Respondent Wei Zhang Alarid shall pay the Department the amount of \$2,803.68 in investigation costs only as a condition precedent to reinstatement of her license. Enforcement Costs: Respondent Anna Sadowska shall pay the sum of \$1,012.37 in enforcement costs, due and payable to the Department only as a condition precedent to reinstatement of her license. Respondent Wei Zhang Alarid shall pay the sum of \$932.27 in enforcement costs, due and payable to the Department only as a condition precedent to

reinstatement of her license.”

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department’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 04 2018.

IT IS SO ORDERED August 14, 2018

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANNA SADOWSKA and WEI ZHANG
ALARID,

Respondents.

Case No. H-40746 LA

OAH No. 2017090894

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on March 26 and 27, 2018.

Julie L. To, Counsel, Department of Real Estate (Department),¹ represented complainant Maria Suarez, a Supervising Special Investigator of the Department.

R. Grace Rodriguez, Esq., represented respondent Anna Sadowska.

Jamie Jiyeon Kim, Esq., LK Professional Law Group, represented respondent Wei Zhang Alarid.

The hearing concluded on March 27, 2018. In an order dated April 24, 2018, the administrative law judge reopened the record for briefing on certain issues. Complainant filed a brief on May 4, 2018 (exhibit 19), and Alarid and Sadowska submitted briefs to the Department on May 17 and 24, 2018, respectively (exhibits P and Q). Complainant was given until May 31, 2018, to reply to respondents' briefs, but did not.

The matter was submitted on May 31, 2018.

SUMMARY

Complainant requests that the Real Estate Commissioner (Commissioner) discipline Sadowska's and Alarid's real estate licenses, alleging they violated the Real Estate Law

¹ The Bureau of Real Estate became the Department of Real Estate effective July 1, 2018.

(Bus. & Prof. Code, § 10000)² and supporting regulations in a never-finished loan modification for two homeowners, who paid \$7,910 but received nothing in return. Complainant also alleges Alarid mishandled trust funds and violated the Department's address reporting requirements, and that Sadowska misrepresented facts, made false promises, and engaged in fraud or dishonest dealing. Alarid admits an address reporting violation, but she and Sadowska otherwise deny wrongdoing. Despite the denials, clear and convincing evidence established cause to revoke both Sadowska's and Alarid's real estate licenses.

FACTUAL FINDINGS

Background

SADOWSKA'S LICENSE AND WORK HISTORY

1. Sadowska has had a broker's license since December 20, 2014, license identification number 01701469. Before becoming a broker, she had a salesperson's license, which the Department originally issued on July 28, 2005. Since December 21, 2015, Sadowska has also been licensed as the officer of corporate licensee Crissana Luxury Real Estate, Inc., license identification number 01994411. Her broker's license will expire on December 9, 2018, and her officer's license will expire on December 20, 2019, unless renewed.

2. Sadowska had several employing brokers while licensed as a salesperson, including three between October 2012 and December 2014: Earth & Above, Inc., American Dream Realty, Inc., and Chelsea Real Estate Group, Inc. In 2012, she also began working for a corporate licensee named American Financial Realty and Mortgage Company (Amerifi), license identification number 01522899, without reporting the affiliation to the Department. Amerifi operated under the fictitious business names Amerifi Home Loans, Amerifi Mortgage, and Amerifi Realty, among others, and its designated officer was broker Alen Aivazian, license identification number 01365057. Both Amerifi and Aivazian surrendered their licenses to the Department in October 2015.

3. Amerifi offered loan modification services to homeowners, and Sadowska worked for Amerifi on a commission basis. An "Independent Contractor & Compensation Agreement" from 2013 stated Sadowska would "generate potential clients to refer to Amerifi Mortgage Los Angeles for a commission per successful transaction" of "50% on all referrals minus Processing fees. [¶] 1. Modification – 1500 [¶] 2. Modification 1st and 2nd loan = 2250.00 [¶] 3. Second Loan settlements – 1500.00." (Exhibit M.) Income statements from the company showed Sadowska received compensation of \$3,660 in 2012 and \$61,841 in 2013. Her compensation from Amerifi in subsequent years was not established.

² Undesignated statutory references are to the Business and Professions Code.

ALARID'S LICENSE AND WORK HISTORY

4. Alarid has had a broker's license since November 19, 2016, license identification number 01885589. Before that, she had a salesperson's license, which the Department originally issued on August 9, 2010. Her broker's license will expire on November 18, 2020, unless renewed.

5. While licensed as a salesperson, Alarid reported working since April 2011 for corporate licensee Highland Investment Group, Inc., and having a mailing address of 411 East Huntington Drive, Suite 215, Arcadia, California 91006. Alarid worked as a salesperson for that company until she became a broker, apart from a one-month period in early 2015. When Alarid became a broker, she reported a main office and mailing address of 17128 Colima Road, #203, Hacienda Heights, California 91745. On January 23, 2017, she added the fictitious business name "AZ Investments" to her license. Alarid had not reported any other fictitious business name to the Department before that.

Request to Sadowska for loan modification assistance

6. In May 2014, homeowner Marilyn P. (M.P.) anticipated an inability to keep paying her \$2,730 per month first mortgage on the home she shared with her husband in Corona, California. The couple was not delinquent on the mortgage, but wanted to reduce their monthly payments and interest rate. M.P. contacted Sadowska because Sadowska had worked on a successful loan modification for M.P.'s sister. Expressing optimism she could help, Sadowska stated she was working at Amerifi with Aivazian and a foreclosure expert named Rodger Mansourian. Sadowska described Aivazian as an attorney, although he is not licensed as one in California.

7. At Sadowska's request, M.P. and her husband signed an "Authorization to Represent Form" on May 23, 2014, on Amerifi Mortgage letterhead. The agreement gave Wells Fargo – the couple's mortgage lender – permission to discuss loan modification with Amerifi and 10 "Specific Agents" of the company, including Aivazian and two persons with the surname Mansourian (Vache and Vahe). (Exhibit 10, p. 14.) Neither Sadowska nor Alarid was on the list of "Specific Agents." Sadowska also told M.P. she would have to pay \$7,910 to a bank account that Sadowska would give to M.P. later.

8. M.P. and her husband stopped making mortgage payments and did not reply to subsequent calls and letters from Wells Fargo, instead forwarding all written communications to Sadowska. M.P. testified she was following Sadowska's instructions, while Sadowska denied telling M.P. to stop making payments. In June 2014, Sadowska had M.P. and her husband sign a three-page "Terms and Conditions – Fee Agreement" between M.P. and "Ideal Financial Inc. dba American Financial Resolution." Sadowska told M.P. that a company name change for Amerifi required a new contract, although the company remained the same. The agreement included a condition that "CLIENT agrees to pay COMPANY \$7,910 for the successful closing of the loan modification. The fee will be paid

by CLIENT to COMPANY upon receipt, review and acceptance of a change in terms/loan modification offer.” (Exhibit 10, pp. 15-17.)

9. In late August 2014, Sadowska had M.P. and her husband sign two more agreements on “Cornerstone Law Group” letterhead, explaining that another name change for Amerifi required them. The agreements did not have an attorney’s name or state bar number on them, and “Cornerstone Law Group” is not a Department licensee or fictitious business name that was associated with Amerifi’s license. A “Retainer Fee Agreement” included a payment provision stating “Cornerstone shall be entitled to \$7,910.00 for . . . ‘successful Loan Restructure performance’ . . .,” which was defined as client acceptance of a loan restructuring. It did not include a completion date for that performance. The Retainer Fee Agreement further stated that “Cornerstone shall not receive any compensation until after the Client accepts a Loan Restructure Offer. If Client does not accept a Loan Restructure Offer, than [sic] no fee shall be due to Cornerstone.” (Exhibit 10, pp. 18-21.) An accompanying “Authorization to Represent” agreement designated Cornerstone Law Group as the couple’s designated agent for attempting to negotiate a loan modification. (*Id.* at p. 22)

10. In late October 2014, M.P. received a “Conditional Approval” letter signed “The Cornerstone Team,” with an invoice for \$7,910 for “Loan Modification Contingency Services Fee Agreement.” According to Sadowska, someone at Amerifi sent the documents, but Sadowska herself did not. The letter stated M.P. and her husband “have been *conditionally approved* for a loan modification,” but did not describe on what terms. Instead, the letter promised “A client representative will go over details with you shortly,” and stated “This approval may be subject to receipt and processing of the following *applicable* items: [¶] • Investor Sign off. [¶] • Meet all preconditions of Lender document requests. [¶] • Cornerstone Contracted Fee Payment [¶] • 3 Consecutive Trial Payments to be made on or before due dates. [¶] • Attend Credit counseling.” It further stated that after execution of the applicable items, M.P. and her husband would receive a three-month trial offer from their lender, followed by a final loan modification offer after the trial period. (Exhibit 10, p. 23.) The invoice described two options to make \$7,910 payment: (1) mail a certified or cashier’s check made out to “Cornerstone Network” to 17128 Colima Road, #512, Hacienda Heights, CA 91745, or (2) a direct deposit to Citibank account number ###-##2-109. (*Id.* at p. 24.) It also stated: “In the event the 3 month trial modification is not converted into a final loan modification and Cornerstone is unable to obtain any other loan modification offer that the Client chooses to accept, Cornerstone shall offer Client a 100% full refund within 3 days of Client written request. How-ever [sic] if the Client defaults on the 3 month trial offer, then it shall be deemed that the loan modification contracted fee shall be considered earned by Cornerstone and no refund shall be due.” (*Ibid.*)

11. When M.P. asked why the payee was “Cornerstone Network,” Sadowska explained that was the name of the trust account for Amerifi. Sadowska also stated the attorney needed the money before they could forward the loan modification package, and that the money would be returned if the proposed modification was unsatisfactory. On or about October 27, 2014, M.P. mailed a \$7,910 cashier’s check payable to Cornerstone

Network to the address on the invoice, which was the same as Alarid's address of record with the Department (17128 Colima Road, Hacienda Heights, CA), but with a different box number (#512 instead of #203).

12. M.P. and her husband never obtained a loan modification, and Wells Fargo started sending foreclosure notices. Sadowska testified M.P. initially accepted a loan modification offer in October 2014 but reconsidered, while M.P. asserted she never accepted because the couple's monthly payments would have been higher than before. M.P.'s version of events was more persuasive, given the lack of documentary evidence of acceptance. Sadowska and M.P. agreed there was a second loan modification offer in about July 2015 that M.P. did not accept. M.P. testified the second offer would also have resulted in higher monthly payments.

13. With a foreclosure sale approaching and no more loan modification offers, Sadowska sent M.P. a Residential Listing Agreement in November 2015 proposing to list the couple's home for sale as their broker. M.P. did not agree to the listing and was upset because she had never told Sadowska she wanted to sell it. No longer trusting Sadowska, M.P. asked for a refund of the \$7,910, but Sadowska replied she did not have the money herself.

14. M.P. hired an attorney who demanded a refund from Sadowska in June 2016, but Sadowska replied she was just a customer service representative and did not personally receive the funds. Sadowska suggested M.P. direct her refund request to Amerifi or Cornerstone Law Group. M.P. called the telephone number on the Cornerstone Law Group documents, but it had been disconnected. She never made contact with anyone at Amerifi or Cornerstone Law Group other than Sadowska. M.P. and her husband did not receive a refund, and filed a complaint with the Department in early October 2016.

Complaint Investigation

15. The Department investigated the complaint and subpoenaed bank records for the account listed on the Cornerstone Law Group invoice (Citibank account number ###-##2-109). The bank records showed respondent Alarid and non-party Steven Alarid opened the account in September 2014 under the fictitious business name "Cornerstone Network," with an address of 411 E. Huntington Drive, Unit 107, Arcadia, California 91006. The account was not a trust account, and respondent Alarid was listed as the primary contact and sole signatory. The records also showed the deposit of M.P.'s cashier's check into the account on October 31, 2014, and the deposits of other checks and money orders payable to "Cornerstone Network," "Cornerstone Mediation Network," "Cornerstone Legal," "Cornerstone Law," "Cornerstone Law Group," and other variants of the "Cornerstone" name, none of which appeared on Alarid's salesperson's license. Some of those other checks and money orders included notations that they were for "Loan Modification Services," "Approved Loan Modification Service Fee," and similar items. There were also cash withdrawals from the account, checks written from the account to Alarid herself, and debit card purchases at restaurants and stores. (Exhibit 14.)

16. The Department also determined that 17128 Colima Road, #512, Hacienda Heights, California – the mailing address for payment on the Cornerstone Law Group invoice – was a mailbox at a UPS store. Alarid's address of record with the Department had the same street address, but a different mailbox number (#203). The Department subpoenaed records from the UPS store, and received records confirming Alarid's rental of both mailboxes.

Current status

17. As of the hearing date, M.P. and her husband had not received a refund of the \$7,910 that they paid. M.P.'s home was still in foreclosure, but Wells Fargo had still not sold it. She has not made mortgage payments on it since 2015.

Accusation and Jurisdiction

18. On August 10, 2017, complainant filed an Accusation in her official capacity requesting that the Commissioner take disciplinary action against Sadowska's and Alarid's licenses. The Accusation alleged Sadowska and Alarid violated the Real Estate Law and supporting regulations in the failed loan modification for M.P. and her husband. It also alleged that Alarid violated the Department's trust fund handling and address reporting requirements, and that Sadowska made misrepresentations and false promises and engaged in fraud or dishonest dealing.

19. Sadowska submitted a timely notice of defense.

20. Alarid did not submit a timely notice of defense, so the Commissioner issued a default decision revoking her license. On October 31, 2017, she requested reconsideration of the decision, and the Commissioner set aside the default. Alarid then submitted a notice of defense dated November 13, 2017.

Respondents' contentions

21. Sadowska contends she treated M.P. and her husband fairly, and that nothing she did for them required a real estate license. At the hearing, she denied owning, operating, or controlling Amerifi, and asserted she was simply a client representative answering leads and incoming calls for Amerifi, not someone acting as a salesperson or broker. Sadowska testified she never made contact with Wells Fargo or negotiated modified loan terms for M.P. or her husband. She also testified she never worked for Ideal Financial Inc. or Cornerstone Law Group, describing them as "affiliated" or "sister companies" of Amerifi, not as different names for Amerifi as she told M.P. Sadowska also denied receiving any payment for the work she did for M.P. and her husband, and denied knowing who Alarid was. In addition, Sadowska testified M.P. never asked for a refund until M.P. hired a lawyer, despite Sadowska urging M.P. to put a refund request in writing beforehand.

22. Alarid contends she was simply performing a check-cashing service for someone else using her bank account. According to her testimony, Alarid deposited checks into her account for about 10 months for a person named "Sam K." at "Cornerstone Mediation Network" – another entity without a Department license – who told her the company could not open its own account. After depositing the checks, Alarid would hold the money for three or four days and then pay it out to Sam K., minus a service fee. According to Alarid, she handled M.P.'s check in this manner, but had no role in any work for M.P. and her husband. Alarid testified she did not know Sadowska or Aivazian, and denied working for Amerifi, Ideal Financial, Inc., or Cornerstone Law Group. She acknowledged an error in reporting a UPS mailbox as her business address, but otherwise denied wrongdoing. As of the hearing date, her address of record was unchanged.

Discussion of evidence

23. The evidence was clear and convincing that Amerifi and Cornerstone Law Group (if different than Amerifi) dealt dishonestly with M.P. and her husband. The multiple contracts, changing company names, invoice for up-front payment, handling of the payment through Alarid's "Cornerstone Network" account, and outcome for the couple – a loss of \$7,910, with no home loan modification – all support this finding.

24. The evidence was less clear as to Sadowska's personal state of mind. While she was M.P.'s point of contact at Amerifi, the evidence did not foreclose the possibility Sadowska believed what she told M.P., and thought Aivazian and others at Amerifi or Cornerstone Law Group were dealing fairly with the couple. Sadowska's denial of personal dishonesty in the transaction, while not determinative, was sufficiently persuasive to avoid a finding that she was. She may have been, but the evidence was not clear and convincing enough for such a finding. However, the absence of that finding is not a defense to discipline for Sadowska's multiple violations of the Real Estate Law in the transaction, as described below.

25. As to Alarid, the evidence supports a finding she had no role in the transaction for M.P. and her husband, apart from depositing their check. But the evidence established that Alarid deposited those and other funds from loan modification transactions in a non-trust bank account, without any apparent involvement of her broker of record (Highland Investment Group, Inc.) This also violated the Real Estate Law in multiple respects, as described below.

Costs

26. Complainant provided statements certifying that the Department incurred \$5,607.35 in investigation costs, plus \$1,012.37 in enforcement costs attributable to Sadowska and \$932.27 in enforcement costs attributable to Alarid.

LEGAL CONCLUSIONS

Legal Standards

1. The Commissioner may suspend or revoke the license of a person who has “[w]illfully disregarded or violated” the Real Estate Law or its supporting regulations (§ 10177, subd. (d)), or engaged in “any . . . conduct . . . which constitutes fraud or dishonest dealing. (§§ 10176, subd. (i), 10177, subd. (j).) The Commissioner may also suspend or revoke a real estate license “at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following: [¶] (a) Making any substantial misrepresentation. [¶] (b) Making any false promises of a character likely to influence, persuade, or induce. [¶] (c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.” (§ 10176, subds. (a)-(c).)

2. “‘Willfully’ as used in section 10177, subdivision (d) does not require an intent to violate the law, only an intent to engage in the act or conduct prohibited by the statute is required.” (*Milner v. Fox* (1980) 102 Cal.App.3d 567, 573, fn. 9.) The disciplinary provision “protect[s] the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman.” (*Handeland v. Dept. of Real Estate* (1976) 58 Cal.App.3d 513, 518.) “An interpretation of section 10177(d) that does not impose disciplinary sanctions upon a salesman when there is a clear and undisputed violation simply because the salesman asserts that the violation was unintentional does, in fact, emasculate the law since it places the burden of enforcement upon the buyer instead of on the Department as intended by the Legislature.” (*Ibid.*)

3. Complainant bears the burden of proving the alleged grounds for discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457; see also *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) Clear and convincing evidence “requires a finding of high probability,” and has been described as “requiring that the evidence be “so clear as to leave no substantial doubt”; “sufficiently strong to command the unhesitating assent of every reasonable mind.”” [Citation.]” (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

Causes for Discipline

4. Complainant alleges some causes for discipline against both Sadowska and Alarid, and some against just one or the other. Clear and convincing evidence established most of them, as described below.

ADVANCE FEES (SADOWSKA AND ALARID)

5. First, complainant alleges Sadowska and Alarid collected advance fees without submitting the form of agreement used to collect it to the Commissioner beforehand as

required. (Accusation, pp. 26-27, ¶¶ 45-46.) Subject to exceptions not applicable here, “[t]he term ‘advance fee,’ . . . is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, . . . before fully completing the service the licensee contracted to perform or represented would be performed.” (§ 10026, subd. (a).) “A person who proposes to collect an advance fee . . . shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use.” (Cal. Code Regs., tit. 10, § 2970, subd. (a).) Failure to do so “shall constitute grounds for disciplinary action . . .” (§ 10085.)

6. Here, the October 2014 invoice from Cornerstone Law Group demanded payment before full completion of the promised “‘successful Loan Restructure performance,’” meaning client acceptance of a loan modification. (Factual Findings 9-10.) M.P. and her husband had not accepted a loan modification when they were invoiced, and had not even received the details of an offer. Instead, the invoice accompanied a “Conditional Approval” letter that contained a limited initial description of an offer, with the promise that a client representative would go over the details with her later. (Factual Finding 10.)

7. In addition, “Cornerstone Network” – i.e., Alarid – received payment before completion of the promised service. M.P. paid the invoice within about a week of receiving it, but had not accepted a loan modification offer, and in fact never did. (Factual Findings 12.) Sadowska’s assertion that M.P. did accept a loan modification before paying was unpersuasive as lacking in documentary support.

8. Furthermore, the promised “‘successful Loan Restructure performance’” was a “service[] requiring a license. . . .” (§ 10026, subd. (a).) Section 10131 provides, in relevant part: “A real estate broker . . . is a person who, for a compensation or in expectation of a compensation, does or negotiates to do one or more of the following acts for another or others: [¶] . . . [¶] (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs 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.” (§ 10131, subd. (d).) Section 10131.2 provides: “A real estate broker . . . is also a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.” The promised service was negotiating a home loan modification for M.P. and her husband, and the fee collected was “in connection with . . . employment undertaken . . . to obtain a loan” on their home. (§ 10131.2.)

9. Therefore, the payment was an advance fee under section 10026, subdivision (a), and the form of agreement used to collect it had to be submitted to the Commissioner

beforehand. (§ 10085.) Complainant did not present direct evidence of non-submission (e.g., from a custodian of records), but the record nonetheless establishes a “high probability” that no such submission occurred. (*In re Angelia P.*, *supra*, 28 Cal.3d at p. 919.)

“Cornerstone Law Group” is not an entity licensed or a name affiliated with Amerifi in Department records. (Factual Finding 9.) Its Retainer Fee Agreement was not designated as an advance fee agreement and did not include a right to payment of an advance fee, although one was ultimately claimed and paid. The agreement also included no definite date for full performance of the services promised (*ibid.*), as required for approval. (Cal. Code Regs., tit. 10, § 2970, subd. (b)(6).) These facts suggest the form of Retainer Fee Agreement was not submitted to the Commissioner beforehand, and neither respondent asserted otherwise.

10. Sadowska asserts she is not subject to discipline because she did not receive the payment herself. But Sadowska stated M.P. had to make the payment to start the loan modification process (Factual Finding 11), and thus “claimed” and “demanded” the fee within the meaning of section 10026, subdivision (a). Sadowska also asserts she is not subject to discipline because she was just a customer service representative who did not perform acts requiring a license. But she was M.P.’s only point of contact at Amerifi, and her commission-splitting agreement with Amerifi undermines her assertion. (Factual Finding 3.) Sadowska was soliciting homeowners to hire Amerifi for loan modification services, and convinced M.P. and her husband to do so and pay an advance fee to “Cornerstone Network,” i.e., Alarid. These activities required a real estate license. (§§ 10131, 10131.2.)

11. Alarid asserts she simply performed a check-cashing service for “Sam K.” at “Cornerstone Mediation Network,” and is therefore not subject to discipline. But she voluntarily accepted and deposited an unauthorized advance fee for real estate activity into her bank account, establishing a violation. The Commissioner may impose license discipline on Alarid even if the violation was unintentional. (*Handeland v. Dept. of Real Estate*, *supra*, 58 Cal.App.3d at p. 518.)

12. Accordingly, the Commissioner may discipline the licenses of Sadowska and Alarid for an advance fee violation.

UNLICENSED ACTIVITIES (SADOWSKA AND ALARID)

13. Second, complainant alleges Sadowska and Alarid violated the Real Estate Law by performing acts requiring a license outside the scope of their employment as real estate salespersons. (Accusation, p. 27, ¶ 47.) Section 10132 provides, in relevant part: “A real estate salesperson . . . is 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 [and] . . . 10131.2” The acts set forth in sections 10131 and 10131.2 include soliciting homeowners for loan modification services and claiming, demanding, or collecting advance fees, as described above.

14. A salesperson may not perform such acts independently, or for anyone other than the broker under whom he or she is licensed. "When a salesman's application for a license is granted, the license goes into possession of the broker-employer and there remains until cancellation or until the salesman leaves that broker's employ. [Citation.]" (*People v. Asuncion* (1984) 152 Cal.App.3d 422, 425.) He or she "can act only for, on behalf of, and in place of the broker under whom he is licensed, and . . . his acts are limited to those which he does and performs as an agent for such broker. [Citation.]" (*Gipson v. Davis Realty Co.* (1963) 215 Cal.App.2d 190, 206-207; see also *People v. Asuncion*, *supra*, 152 Cal.App.3d at p. 425; *Resnik v. Anderson & Miles* (1980) 109 Cal.App.3d 569, 572; *Grand v. Griesinger* (1958) 160 Cal.App.2d 397, 405.)

15. Despite these restrictions, Sadowska worked for Amerifi on a never-realized home loan modification for M.P. and her husband, resulting in a \$7,910 advance fee payment in October 2014. Amerifi was not Sadowska's broker of record (see Factual Finding 2), and thus Sadowska's salesperson license did not authorize her to perform those acts. Sadowska's assertion that she did not perform any acts requiring licensure was unpersuasive, as described above in Legal Conclusion 10.

16. Alarid accepted and deposited the \$7,910 advance fee payment while licensed as a salesperson, and no evidence suggests she did so for her broker of record (Highland Investment Group, Inc.). To the contrary, Alarid testified she did so for "Sam K." at "Cornerstone Medication Network," an unlicensed entity, in return for a service fee for herself. (Factual Finding 22.) Her salesperson license did not authorize her to take these actions independently of her broker of record.

17. Therefore, the Commissioner may take disciplinary action against Sadowska and Alarid for unlicensed activity.

UNLAWFUL EMPLOYMENT OR PAYMENT OF COMPENSATION (SADOWSKA AND ALARID)

18. Third, under the heading "Unlawful Employment or Payment of Compensation," complainant alleges Sadowska and Alarid "received compensation for activities requiring a real estate license from a source other than the broker(s) under which they were at the time licensed." (Accusation, p. 28, ¶ 48.) Under section 10137, "[n]o real estate salesperson shall be employed by or accept compensation for activity requiring a real estate license from any person other than the broker under whom he or she is at the time licensed."

19. While licensed as a salesperson, Sadowska was employed by Amerifi for activity requiring a real estate license, even though Amerifi was not her broker of record. "Employ[ment]" for purposes of section 10137 includes work as an independent contractor relationship (§ 10032), and Sadowska had an independent contractor relationship with Amerifi, working for a commission per successful transaction. (Factual Finding 3.) While Sadowska denied receiving compensation for her work for M.P. and her husband, section

10137 authorizes discipline for unlawful employment *or* acceptance of compensation by a salesperson.³

20. Alarid accepted compensation for activity requiring a real estate license independently of her broker of record, in the form of the \$7,910 advance fee from M.P. and her husband. (Factual Finding 15.) Her lack of involvement in the underlying transaction does not negate the violation. Her later payment of that amount to "Sam K.," minus a service fee, also does not negate it.

21. Therefore, the Commissioner may discipline the licenses of Sadowska and Alarid for unlawful employment or acceptance of compensation.

TRUST FUND HANDLING (ALARID ONLY)

22. Fourth, complainant alleges Alarid mishandled trust funds and made unauthorized withdrawals of trust funds. (Accusation, p. 28, ¶ 49.) "A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person." (§ 10145, subd. (a)(1).) "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." (§ 10145, subd. (c).)

23. The \$7,910 payment from M.P. and her husband was made in connection with a loan modification transaction subject to the Real Estate Law. The funds did not belong to Alarid, but she nonetheless deposited them into her non-trust "Cornerstone Network" account from which she made personal withdrawals. The same is true of the other checks and money orders she deposited with notations of "Loan Modification Services," "Approved Loan Modification Service Fee," and the like. (Factual Finding 15.) There is a high probability those other deposits were also funds belonging to others in connection with transactions subject to the Real Estate Law. No evidence suggested she accepted the funds on behalf of her broker of record.

24. Therefore, the Commissioner may take disciplinary action against Alarid for mishandling trust funds.

³ Sadowska's reported compensation from Amerifi in 2012 and 2013 is too remote in time to support discipline under the applicable three-year statute of limitations. (§ 10101.).

FICTITIOUS BUSINESS NAMES (ALARID ONLY)

25. Fifth, complainant alleges Alarid used fictitious business names to conduct activity requiring a license without first obtaining a Department license bearing those names. "A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name." (Cal. Code Regs., tit. 10, § 2731, subd. (a).) "Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk . . ." (§ 10159.5, subd. (a)(1).) "A salesperson using a fictitious business name authorized by subdivision (a), shall use that name only as permitted by his or her responsible broker." (§ 10159.5, subd. (b)(1).)

27. Alarid did not report using any fictitious business names as a salesperson, and only reported using one fictitious business name (AZ Investments) since January 23, 2017, after she became a broker. (Factual Finding 5.) Nonetheless, Alarid opened a bank account in September 2014 under the fictitious business name "Cornerstone Network," and received funds belonging to others in real estate transactions under that name and variants of it, including the \$7,910 cashier's check from M.P. and her husband. (Factual Finding 15.) Therefore, the Commissioner may take disciplinary action against Alarid for a fictitious business name violation.

PLACE OF BUSINESS (ALARID ONLY)

28. Sixth, complainant alleges Alarid did not maintain a valid address of record on file with the Department. (Accusation, p. 29, ¶ 51.) "Every licensed real estate broker shall have and maintain a definite place of business in the State of California that serves as his or her office for the transaction of business. This office shall be the place where his or her license is displayed and where personal consultations with clients are held." (§ 10162, subd. (a).) The broker must maintain on file with the Commissioner the address of that "principal place of business for brokerage activities." (Cal. Code Regs., tit. 10, § 2715.)

29. Alarid received her real estate broker's license on November 19, 2016, and reported her main office and mailing address at that time as 17128 Colima Road, #203, Hacienda Heights, California 91745. (Factual Finding 5.) But that address was a mailbox at a UPS store, not an office for the transaction of business, or a place where she could display her license or hold personal consultations. (Factual Finding 16.) Alarid acknowledged the address reporting violation at the hearing, but still had not corrected it as of the hearing date. Therefore, the Commissioner may take disciplinary action against her for the address reporting violation.

BRANCH OFFICES (ALARID ONLY)

30. Seventh, complainant alleges Alarid performed acts requiring a real estate license at branch offices without first procuring a license from the Department for those

branch offices, in violation of section 10163. (Accusation, p. 29, ¶ 52.) The alleged branch offices were: (1) 17128 Colima Road, #512, Hacienda Heights, California (one of Alarid's two UPS mailboxes), and (2) 411 E. Huntington Drive, Unit 107, Arcadia, California (the address on Alarid's bank account and her former address of record with the Department). Section 10163 provides: "If the applicant for a real estate broker's license maintains more than one place of business within the State he shall apply for and procure an additional license for each branch office so maintained by him. Every such application shall state the name of the person and the location of the place or places of business for which such license is desired. The commissioner may determine whether or not a real estate broker is doing a real estate brokerage business at or from any particular location which requires him to have a branch office license." (§ 10163.)

31. Section 10163 refers only to brokers, not salespersons, and the evidence presented about Alarid's use of these addresses precedes her licensure as a broker. Alarid became a broker on November 19, 2016, and complainant presented no evidence of her use of those addresses after that date, either as branch offices or otherwise. Therefore, complainant did not present sufficient evidence to take disciplinary action against Alarid for a violation of section 10163.

SUBSTANTIAL MISREPRESENTATIONS, FALSE PROMISES, AND FRAUD OR DISHONEST DEALING (SADOWSKA ONLY)

32. The eighth, ninth, and tenth causes for discipline allege Sadowska made substantial misrepresentations and false promises while engaging in the business of or acting in the capacity of a real estate broker, and further engaged in fraud or dishonest dealing. (Accusation, pp. 29-30, ¶¶ 53-55.) Dishonest dealing "may encompass more than just fraud or deception," but "'necessarily includes the element of bad faith, which means fraud, deception, betrayal, faithlessness.' . . . It 'denotes an absence of integrity.' [Citations.]" (*Chodur v. Edmonds* (1985) 174 Cal.App.3d 565, 572.)

33. An accusation for disciplinary action for substantial misrepresentations, false promises, or fraud or dishonest dealing must be filed within one year after discovery by the aggrieved party or three years after the occurrence thereof, or, whichever is later. (§ 10101.) Here, M.P. suspected wrongdoing by Sadowska and Amerifi in November 2015 and hired an attorney in June 2016 – well over a year before complainant filed the Accusation on August 10, 2017. (Factual Finding 14.) Therefore, the three-year period applies, and the alleged substantial misrepresentations, false promises, and fraud or dishonest dealing must have occurred within three years of the Accusation's filing on August 10, 2017.

34. The evidence established a substantial misrepresentation during this period about what "Cornerstone Network" was. After receiving the payment invoice in October 2014, M.P. asked why the payee was "Cornerstone Network," and Sadowska explained that was the name of Amerifi's trust account. (Factual Finding 11.) But Cornerstone Network was Alarid's fictitious business name, and the account was not a trust account. In reality, the payment from M.P. and her husband was never placed in a trust account. The Commissioner

may take disciplinary action against Sadowska for this substantial misrepresentation under section 10176, subdivision (a).

35. Regarding false promises, complainant's post-hearing brief notes Sadowska assured M.P. several times that M.P.'s money would be refunded if she was unsatisfied, which she was. (See Exhibit 19.) Furthermore, some of those assurances occurred within three years of the Accusation's filing. But the evidence was not clear and convincing enough to establish that Sadowska believed these promises were false when she made them (Factual Finding 24), and a promise is not necessarily false just because the promised event does not occur. Therefore, complainant did not present sufficient evidence to support disciplinary action for a false promise under section 10176, subdivision (b).

36. Similarly, complainant did not present sufficient evidence to establish cause to discipline Sadowska for fraud or dishonest dealing, for the reasons described in Factual Finding 24. The evidence of Sadowska's state of mind was not clear and convincing enough to establish she was personally dishonest or lacking in integrity. She may have been, but that possibility is not enough to support discipline for fraud or dishonest dealing.

Level of Discipline

37. The primary purpose of administrative license proceedings is to protect the public, and the object of discipline is not to punish the licensee. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817; see also *Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448-450.)

38. As to Sadowska, her dealings with M.P. and her husband violated the Real Estate Law in multiple respects. She performed real estate activity for an employer who was not her broker of record, including an advance fee violation, and made a substantial misrepresentation about how the advance fee would be held. Her conduct was in disregard of the laws requiring a salesperson to act only as an agent for his or her employing broker. Sadowska is now a broker, and her conduct as a salesperson raises serious concerns about how she will handle the increased responsibilities and independence of a broker. Whether or not she was personally dishonest, her violations were serious and contributed to a significant monetary loss to homeowners. At the same time, she denied all wrongdoing, displaying no insight into her violations, and presented no evidence of rehabilitation. Absent evidence of such insight and rehabilitation, protection of the public requires revocation of her license.

39. Alarid's multiple violations raise similar concerns as the violations of Sadowska. Alarid also performed real estate activity outside the scope of employment by her broker of record, using her "Cornerstone Network" checking account to deposit real estate funds belonging to others, including an unauthorized advance fee from M.P. and her husband. Alarid's mishandling of real estate trust funds was particularly serious, and evidenced a lack of understanding of the strict requirements for handling such funds. Alarid's violations also contributed to the monetary loss of M.P. and her husband, even though Alarid herself was not involved in the underlying loan modification transaction. Like

Sadowska, Alarid is also now a broker with increased responsibilities and independence, but displayed no insight into her violations and offered no rehabilitation evidence. Alarid's violations suggest public protection is at risk with Alarid in that new role. Therefore, her real estate license should be revoked as well.

Costs

40. Complainant requests \$5,607.35 in investigation costs, plus \$1,012.37 in enforcement costs attributable to Sadowska and \$932.27 in prosecution costs attributable to Alarid. (Factual Finding 26.) "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, 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." (§ 10106, subd. (a).)

41. Complainant offered certified copies of the Department's costs, which are prima facie evidence the costs are reasonable. (§ 10106, subd. (c).) Respondents presented no evidence that they are not. Respondents also did not obtain a reduction in the severity of the discipline imposed from the maximum discipline requested in the Accusation (i.e., revocation), or assert a colorable challenge to discipline. Their subjective belief in the merits of their position does not justify a reduced cost award. In addition, the Department's investigation was not disproportionately large compared to the proven violations, and Sadowska and Alarid did not argue they will be financially unable to pay the Department's costs. Therefore, they will be ordered to pay them. (See *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.)

ORDER

All licenses and licensing rights of respondents Anna Sadowska and Wei Zhang Alarid under the Real Estate Law are revoked.

Within 30 days of the effective date of this order, respondents Anna Sadowska and Wei Zhang Alarid shall pay the Department a total of \$5,607.35 in investigation costs.

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Within 30 days of the effective date of this order, respondent Anna Sadowska shall also pay the Department \$1,012.37 in enforcement costs, and respondent Wei Zhang Alarid shall pay the Department \$932.27 in enforcement costs.

DATED: July 2, 2018

DocuSigned by:

Thomas Heller

CFDEA01421714AS

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

Flagged

FILED

NOV 09 2017

BUREAU OF REAL ESTATE

By *Sybil Minner*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

ANNA SADOWSKA and
WEI ZHANG ALARID,

Respondents.

)
) CalBRE No. H-40746 LA
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)
)

ORDER VACATING DECISION AND SETTING ASIDE DEFAULT

On October 24, 2017, a Decision was rendered revoking the real estate broker license of Respondent, WEI ZHANG ALARID, effective November 13, 2017.

On November 01, 2017, good cause was presented to vacate the Decision of October 24, 2017, and to have the matter remanded to the Office of Administrative Hearings as a contested matter.

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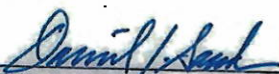
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1 NOW, THEREFORE, IT IS ORDERED that the Decision of October 24, 2017, is
2 vacated and that the Matter of the Accusation filed on August 10, 2017, is remanded to the Office
3 of Administrative Hearings.

4 This Order shall be effective immediately.

5 DATED: November 08, 2017.

6 WAYNE S. BELL
7 REAL ESTATE COMMISSIONER

8
9 By: 
10 DANIEL J. SANDRI
11 Chief Deputy Commissioner
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FILED

OCT 24 2017

BEFORE THE BUREAU OF REAL ESTATE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

By *[Signature]*

* * *

In the Matter of the Accusation of	)	CalBRE No. H-40746 LA
	)	
ANNA SADOWSKA and	)	
<u>WEI ZHANG ALARID,</u>	)	
	)	
Respondent(s).	)	

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on October 5, 2017, and the Findings of Fact set forth herein, which are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. 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.

FINDINGS OF FACT

1.

On August 2, 2017, Maria Suarez made the Accusation in her official capacity as a Supervising Special Investigator of the Bureau. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, to Respondent's last known mailing address on file with the Bureau on August 10, 2017.

On October 5, 2017, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2.

Respondent WEI ZHANG ALARID ("hereinafter "Respondent") is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (herein "the Code") as a real estate broker. ALARID's real estate broker's license will expire on November 18, 2020.

3.

Attached as Exhibit "A" is a true and correct copy of the Accusation filed on August 10, 2017, which is incorporated herein as part of this Decision.

DETERMINATION OF ISSUES

1.

The conduct, acts and/or omissions of Respondent WEI ZHANG ALARID, as set forth above, are cause for the suspension or revocation of the license and license rights of Respondent pursuant to Code Sections 10085, 10130, 10137, 10145(c), 10159.5, 10162, 10163, 10166.02, 10176(a), 10177(d) and Regulations 2715, 2731, and 2970.

2.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

All licenses and licensing rights of Respondent WEI ZHANG ALARID under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on NOV 13 2017.

DATED: 10/20/17.

WAYNE S. BELL
REAL ESTATE COMMISSIONER

By: 
DANIEL J. SANDRI
Chief Deputy Commissioner

1 Bureau of Real Estate
2 320 West Fourth St, Ste 350
3 Los Angeles, CA, 90013

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FILED

OCT 05 2017

BUREAU OF REAL ESTATE

By R. Posada

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA
10

11 In the Matter of the Accusation of)
12 WEI ZHANG ALARID,)
13 Respondent.)
14

CalBRE NO. H-40746 LA
DEFAULT ORDER

15 Respondent WEI ZHANG ALARID, having failed to file a Notice of
16 Defense within the time required by Section 11506 of the Government Code, is now in
17 default. It is, therefore, ordered that a default be entered on the record in this matter.

18 IT IS SO ORDERED

October 4, 2017

19 WAYNE S. BELL
20 REAL ESTATE COMMISSIONER

21
22 By:

Dolores Ramos
23 DOLORES RAMOS
24 Regional Manager
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26
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