

FILED

JUN 21 2019

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE
By Ingrid Danney

In the Matter of the Notice of Intention to Issue
Bar Order Against:

PHILIP GARCIA,

Respondent.

In the Matter of the Order to Desist and Refrain
Against:

SUN CITY GROUP,
PHILIP CHRISTIAN GARCIA,
PABLO CORONADO,
CLAUDIA LOPEZ-TORRES, and
DENISE VELASQUEZ,

Respondents.

DRE No. H-41212 LA

OAH No. 2018120583

DRE Case No. H-41211 LA

OAH Case No. 2019030242

DECISION

The Proposed Decision dated June 17, 2019, 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 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 JUL 10 2019.

IT IS SO ORDERED June 20, 2019.

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Notice of Intention to
Issue Bar Order Against:

PHILIP CHRISTIAN GARCIA,

Respondent.

Case No. H-41212 LA

OAH No. 2018120583

In the Matter of the Order to Desist and
Refrain Against:

SUN CITY GROUP,
PHILIP CHRISTIAN GARCIA,
PABLO CORONADO,
CLAUDIA LOPEZ-TORRES, and
DENISE VELASQUEZ,

Respondents.

Case No. H-41211 LA

OAH No. 2019030242

PROPOSED DECISION

This consolidated matter was heard by Administrative Law Judge James Michael Davis (ALJ), Office of Administrative Hearings, State of California, on May 20, 2019, in Los Angeles.¹ The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Lissete Garcia, Counsel, represented Daniel J. Sandri (complainant).

Philip Christian Garcia (respondent) was present and represented himself.

No appearance was made on behalf of Sun City Group. No appearance was made by or on behalf of Pablo Coronado, Claudia Lopez-Torres or Denise Velasquez. The record did not establish that complainant served these parties.² Accordingly, no findings or order

¹ Pursuant to complainant's unopposed motion, which was granted by the Presiding Administrative Law Judge, the above-captioned matter was consolidated for hearing.

² Respondent consistently maintained that he owned no part of the Sun City Group

regarding Sun City Group, Pablo Coronado, Claudia Lopez-Torres or Denise Velasquez are made herein.

Rosario M. Lucas provided Spanish-to-English interpreter services for complainant's witnesses.

At hearing, complainant agreed to the ALJ preparing a single Proposed Decision and Order. (See Cal. Code Regs., tit. 1, § 1016, subd. (d).)

FACTUAL FINDINGS

1. Complainant brought the Notice of Intention to Issue Bar Order (Bar Order) and Order to Desist and Refrain (Desist Order) in his official capacity as the Acting Real Estate Commissioner (Commissioner), Department of Real Estate (Department). The Bar Order seeks to bar and prohibit respondent from engaging in various real estate-related business activities for 36 months. Respondent timely notified complainant of his intent to contest these matters.

2A. At no time has respondent been licensed in any capacity by the Department. (See ex. 4.)

2B. At no time has Sun City Group, Pablo Coronado, Claudia Lopez-Torres or Denise Velasquez been licensed in any capacity by the Department. (See exs. 3, 5-7.)

3A. In July 2016, in Case No. H-39960 LA, the Commissioner found respondent violated Business and Professions Code³ section 10167.2 by engaging in the business of a pre-paid rental listing service⁴ (PRLS) within the State of California without a license. The Commissioner issued an Order to Desist and Refrain against respondent, who was an agent, associate or co-conspirator of Charles Ivan SantaMaria, doing business as Approved

and did not exercise control over it. Respondent did not state on the record that he was appearing on behalf of the other respondents, and no Notice of Defense or Request for Hearing on behalf of the other respondents was submitted.

³ All subsequent references are to the Business and Professions Code unless otherwise indicated.

⁴ "Prepaid rental listing service" is a business that supplies prospective tenants with listings of residential real properties for tenancy, by publication or otherwise, pursuant to an arrangement under which the prospective tenants are required to pay an advance or contemporaneous fee. (§10167, subd. (a).)

Application Services, Home Advisor Services, Homes Unlimited Rentals, and Application Advisors Services, among others.

3B. On July 25, 2016, the Department received respondent's acknowledgement of service of the order to desist and refrain. The record is silent as to the final disposition of this matter vis a vis respondent.

4A. In 2017, a business known as "Sun City Group" began PRLS operations in Los Angeles. Sun City Group included respondent, Denise Velasquez, Pablo Coronado, Claudia Lopez-Torres and unknown other officers, agents or employees of Sun City Group. Sun City Group was engaged in PRLS activities despite having no PRLS license in its name or in the name of any of the aforementioned people.

4B. Specifically, in March 2017, in furtherance of Sun City Group's PRLS operations, respondent leased an office located at 1901 S. Alameda Street, Unit 107, in Los Angeles, as the "president" of Sun City Group. (Ex. 17.) A credit application for the lease of that office space was submitted by Claudia Lopez-Torres several weeks prior. The credit application was signed by respondent, "owner" of Sun City Group. (*Ibid.*)

5. At hearing, Edgar Galindo, Abdel Barcelo, Fortina Moran, Maria Rodriguez and Daniel Perez all testified to responding to Sun City Group's magazine solicitation. To all of these witnesses, Sun City Group offered to provide a list of suitable rental apartments in exchange for a payment of \$245. All were provided lists that had profound problems. For instance, the properties offered were not available or the contact information was incorrect. All witnesses stated they sought refunds and followed the Sun City Groups instructions to receive their refund, but ultimately never received any reimbursement. The witnesses testified their interactions at Sun City Group were with various female receptionists or salespeople and not with respondent. The testifying Sun City Group-defrauded witnesses are only a small subset of those that suffered losses from Sun City Group's illegal PRLS activities. (See ex. 16.)

6. At hearing, investigator Jesus Munoz, who was assigned to investigate Mr. SantaMaria's PRLS activities in 2015, testified regarding an encounter he had with respondent at a Department office in March 2015. Mr. Munoz testimony was corroborated by a memo he prepared following the encounter. (See ex. 9, p. 21.) Mr. Munoz stated that when respondent appeared with Mr. SantaMaria's at the Department office, respondent described himself as a "compliance consultant." Respondent testified that he never made that statement. But it strains credulity that Mr. Munoz would lie in his memo and then at hearing three years later by saying something as tepid as respondent stating he was a compliance consultant. Respondent's refutation of Mr. Munoz's testimony was unconvincing.

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7. Complainant introduced in evidence the police report prepared by the Los Angeles Police Department (LAPD) in July 2017 regarding its investigation into Sun City Group's PRLS activities. (See ex. 21.) Although Claudia Lopez-Torres's and others statements to the LAPD investigating officers within the report are hearsay, they can be used to support or explain other direct evidence. (See Gov. Code § 11513, subd. (d).) In this case, Ms. Lopez-Torres's statements to the investigating officer provide a more plausible explanation as to why respondent signed the lease agreement and credit application on behalf of Sun City Group.

8. Per the police report, Ms. Lopez-Torres was interviewed on August 31, 2017. She told the officer that respondent introduced her to "the concept of Sun City Group and rental referrals." (Ex. 21, p. 19.) Ms. Lopez-Torres stated she was paid \$100 per day to be the supervisor of the PRLS businesses, which involved, among other matters, collecting the money from clients and placing the advertisements. The report further noted that on September 6, 2017, Flora Bral Trust, a property management company overseeing a commercial property at 115 N. Long Beach Boulevard in the City of Compton was contacted. Flora Bral's employee responded to the LAPD by email, providing a rental agreement that indicated that respondent was renting space at 115 N. Long Beach Boulevard under the name of "LB Referrals." (*Id.* at p. 20.)

Respondent's Testimony

9. Declining to testify in his own defense, respondent on cross examination presented himself as a victim. His testimony was self-serving, implausible and unconvincing. First, respondent asserted that his only involvement in Sun City Group was to offer his "perfect credit" to Claudia Lopez-Torres, the daughter of his friend, Joe Torres.

10. In his testimony, respondent denied having any ownership or control of the aforementioned PRLS businesses. He emphasized this point by confirming that none of the witnesses saw or interacted with him at Sun City Group. That argument was unpersuasive based his prior involvement with PRLS activities and the numerous credibility issues raised by his testimony

11. Further, when confronted with Ms. Lopez-Torres's statement in the police report that he was in effect the "man behind the curtain" in Sun City Group's PRLS business, respondent asserted, without elaborating, that she was lying.

12. At hearing, respondent also sought to leverage the dismissal of his felony complaint on the same allegations as proof of his total exoneration. This too was unconvincing. The felony complaint placed two defendants: Claudia Lopez-Torres and Pablo Coronado on probation and committed respondent along with the other defendants to share equally in paying \$15,000 in victim restitution. Respondent implausibly testified that

there was no consideration for his dismissal and that he agreed to pay his \$4,000 share of the restitution because he wanted to help the victims and facilitate his return to work as he had been on an involuntary leave of absence since the criminal complaint was filed. He further stated that, the money he paid was Claudia Lopez-Torres's anyway, apparently under his continuing arrangement wherein he was providing his good credit alone to assist in the business.

13. Respondent stated he worked long hours as a driver for Access Paratransit, a position he has held the last nine years. Because of this job, respondent testified that he did not have time to engage in the illegal activity alleged. But it appears from the record that lending his expertise and being detached and ostensibly uninvolved was his aim. When complainant referenced the police report statement that indicated respondent signed a second lease agreement for LB Referrals, another business for PRLS activities, respondent testified that his signature was forged.

14. With regard to forged signatures, the only documentation presented by respondent was a "Hold Harmless Agreement" (agreement) between respondent and Ms. Lopez-Torres. (Ex. A.) Respondent said he prepared the agreement at the recommendation of an attorney friend to financially insulate him from Ms. Lopez-Torres's business. Respondent argued that the agreement further underscores his non-involvement in Ms. Lopez-Torres's Sun City Group venture beyond helping her with his credit. Although that agreement was admitted into evidence over complainant's hearsay and foundation objections, it is highly probable that Claudia Lopez-Torres's signature on the agreement was forged. First, it is curious that Claudia Torres's "signature" is simply her initials. Moreover, a comparison of the jagged style of her initials in the agreement with her signature on her restitution money orders (see ex. 23, pp. 12-13) raises serious doubts as to the agreement's legitimacy. (See Evid. Code, §1417 [trier of fact may prove genuineness of handwriting through comparison].) For these reasons, the agreement is not credible. Since this likely-forged document is respondent's chosen documentary evidence it significantly undercuts respondent's overall credibility. (See Evid. Code § 780, subd. (i).)

15. Based upon the foregoing, complainant established by a preponderance of the evidence that respondent was the behind-the-scenes initiator and coordinator of Sun City Group's PRLS activities.

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LEGAL CONCLUSIONS

Burden of Proof

1. Evidence Code section 115 provides:

“Burden of proof” means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt.

Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

2. The default standard of proof is the preponderance of the evidence, unless otherwise indicated by constitutional, statutory, or decisional laws. (*Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 365.)

3. The burden of proof in this consolidated matter is on the complainant. As discussed below, complainant has met his burden of proof with regard to both the Bar Order and the Desist Order.

Statutory Authority

4. Section 10130 provides in pertinent part that “[i]t is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department...”

5. Section 10139 provides that one who acts without a real estate license in a capacity that requires a real estate license is guilty of a public offense punishable by a fine not exceeding \$20,000 or imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment.

6. Section 10167.2, subdivision (a) provides that "[i]t is unlawful for any person to engage in the business of a prepaid rental listing service unless licensed in that capacity or unless licensed as a real estate broker."

7. Section 10167.9, subdivision (c) provides in pertinent part that "[t]he form of contract proposed to be used by a licensee to effect compliance with [the Prepaid Rental Listing Service] section shall be filed with the [Department] prior to use."

8. Section 10167.10 specifies the manner in which a licensee shall refund fees paid for access to a prepaid rental listing by a prospective tenant.

9. Section 10167.11 provides that:

It shall be a violation of this article for any licensee or any employee or agent of a licensee to do the following:

(a) Make, or cause to be made, any false, misleading, or deceptive advertisements or representations concerning the services that the licensee will provide to prospective tenants.

(b) Refer a property to a prospective tenant knowing or having reason to know that:

(1) The property does not exist or is unavailable for tenancy.

(2) The property has been described or advertised by or on behalf of the licensee in a false, misleading, or deceptive manner.

(3) The licensee has not confirmed the availability of the property for tenancy during the four-day period immediately preceding dissemination of the listing information. However, it shall not be a violation to refer a property to a prospective tenant during a period of from five to seven days after the most recent confirmation of the availability of the property for rental if the licensee has made a good faith effort to confirm availability

within the stated four-day period, and if the most recent date of confirmation of availability is set forth in the referral.

(4) The licensee has not obtained written or oral permission to list the property from the property owner, manager, or other authorized agent.

10. Section 10167.15 provides that “[a]ny person... who willfully violates any provision of the [Prepaid Rental Listing Services article of the Real Estate Law] is guilty of a misdemeanor.”

Desist Order

11. Under section 10086, when “the commissioner determines through an investigation that a person has engaged or is engaging in an activity which is a violation of a provision [of the Real Estate Law], the commissioner may direct the person to desist and refrain from such activity by issuance of an order.” By this statute, the Commissioner has jurisdiction to issue such an order against respondent, even though respondent is not licensed by the Department.

12. It was established by a preponderance of the evidence that respondent has performed or participated in PRLS activities which required a real estate license under section 10167.2 or a real estate broker license under section 10131, during a period of time when respondent was not licensed by the Department in any capacity, in violation of section 10130. (Factual Findings 1-15.) Respondent’s unlicensed PRLS activity also constitutes a misdemeanor offense under section 10167.15. Although alleged as additional statutory violations supporting the Desist Order, respondent did not violate sections 10167.10 and 10167.11 because those sections apply only to licensees or the licensee’s agents or employees. (See Factual Finding 2.)

Bar Order

13. Under section 10087, subdivision (a)(1), the Commissioner may, after appropriate notice and an opportunity to be heard, issue an order barring a person from holding any position of employment, management, or control in a real estate business for a period of no longer than 36 months, if that person is unlicensed and that person has committed or caused a violation of the Real Estate Law or order of the Commissioner, which violation was known or should have been known or has caused material damage to the public.

14. Those barred under section 10087 are prohibited from participating in any business activity of a real estate salesperson or broker and from engaging in any real estate-related business activity on the premises where a real estate salesperson or broker is conducting business; and from participating in any real estate related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company.

15. Respondent was knowingly involved in performing and directing unlicensed PRLS activities and, using fictitious business names, including Sun City Group, which required a PRLS license or a real estate broker license in violation of sections 10167.2 (unlicensed activity) and 10167.15 (misdemeanor offense). (Factual Findings 1-15.) Although alleged as additional statutory violations supporting the Bar Order, respondent did not violate sections 10167.10 and 10167.11 because those sections apply only to licensees or licensee's agents or employees. (See Factual Finding 2.)

16. Respondent was knowingly overseeing or involved in performing and directing PRLS activities, while doing business in support of Sun City Group, which resulted in unreimbursed financial losses of \$245 each to at least five Sun City Group clients, thereby causing material damage to the public. (Factual Findings 1-15.)

17. Under section 10087, a bar order is in the public interest, in that respondent knowingly violated provisions of the Real Estate Law. Respondent embarked on a plan to compensate lower level participants to be the "front" of the PRLS businesses in question. Respondent went to great lengths to hide his involvement in these businesses. The Sun City Group PRLS business directed by respondent and fronted by others on respondent's behalf violated the Real Estate Law. Such violations caused material damage to the public in that at least five consumers each paid \$245 for prepaid rental listing services that were never provided; and thereafter their valid refund requests were delayed and denied in bad faith. Respondent accepted no responsibility for his misconduct, expressed no remorse, and offered no sign of rehabilitation. His testimony was not credible. Therefore, no reason is apparent to bar respondent for any period less than the maximum time under these circumstances. (Factual Findings 1-15.)

18. During closing argument, complainant requested that, if his Bar Order and Desist Order were affirmed, the ALJ order respondent to pay restitution to the witnesses that testified to their loss. But complainant provided no authority for issuance of such a restitution order to a person—such as respondent—who is not a Department licensee. Accordingly, this request is reluctantly rejected.

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ORDER

The Notice of Intention to Issue Bar Order against respondent Philip Christian Garcia is affirmed.

For a period of 36 months from the effective date of this order, respondent Philip Christian Garcia is barred and prohibited from engaging in any business activity involving real estate that is subject to regulation under the Real Estate Law in the State of California, including, but not limited to: (a) holding any position of employment, management, or control in a real estate business or prepaid rental listing service business; (b) participating in any business activity of a real estate salesperson or a real estate broker; (c) engaging in any real estate-related business activity on the premises where a PRLS, real estate salesperson or real estate broker is conducting business; and (d) participating in any real estate-related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company.

The Order to Desist and Refrain issued against respondent Philip Christian Garcia is affirmed.

Respondent Philip Christian Garcia, whether doing business under his own name, or any other name, or any fictitious name, is ordered to immediately desist and refrain from performing any acts within the State of California for which a real estate broker license or a prepaid rental listing service license is required, and in particular, doing one or more of the following acts for another or others, for, or in expectation of, compensation: performing or participating in, the business of prepaid rental listing services, or engaging in rental property activities of any kind whatsoever unless and until respondent has obtained a real estate broker or prepaid rental listing license issued by the Department.

DATED: June 17, 2019

DocuSigned by:

James Michael Davis

JAMES MICHAEL DAVIS

Administrative Law Judge

Office of Administrative Hearings