

FILED

APR 21 2020

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE
By @alblow

* * *

In the Matter of the Accusation of:)	DRE No. H-41402 LA
)	
HUMBERTO LEON, doing business as)	OAH No. 2019080929
Quality Real Estate; and CARLOS R.CARRILLO)	
)	
Respondents.)	

DECISION

The Proposed Decision dated February 19, 2020, 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.

Factual Findings, The Judgment Against Leon and Carrillo, Page 5, Paragraph 22, Line 1, "Leon did not establish and policies..." is amended to read "Leon did not establish policies..."

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 MAY 11 2020.

IT IS SO ORDERED 6/20/20

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER



A handwritten signature in blue ink, appearing to read 'SK', is written over a horizontal line.

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation against:

HUMBERTO LEON, doing business as Quality Real Estate;

and CARLOS R. CARRILLO,

Respondents.

Agency Case No. H-41402 LA

OAH No. 2019080929

PROPOSED DECISION

Christopher Ruiz, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 21, 2020, in Los Angeles, California.

Judith B. Vasan, Counsel for the Department of Real Estate (Department), appeared on behalf of complainant Maria Suarez (complainant), a Supervising Special Investigator of the State of California.

Respondent Humberto Leon (Leon) appeared and represented himself and Quality Real Estate. Respondent Carlos R. Carrillo (Carrillo) did not appear at the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 21, 2020.

FACTUAL FINDINGS

1. On July 17, 2019, complainant filed the Accusation in her official capacity.
2. On August 6, 2019, Leon filed a Notice of Defense.
3. On August 6, 2019, Carrillo also filed a Notice of Defense. On the Notice of Defense, Carrillo reported his address as 3852 E. Grand Ave., Pomona, CA, 91766.

Leon's License History

4. On February 9, 1994, the Department issued real estate broker license number B/01011379 to Leon (broker license). Leon's broker license is active and is scheduled to expire on February 8, 2022, unless renewed.

5A. From May 22, 2013, through February 9, 2015, Leon used his broker license to conduct business as Quality Real Estate, a fictitious business name.

5B. Leon currently maintains the fictitious business name "Leon Realty and Associates" under his broker license.

6. From March 15, 2016, through March 19, 2018, Leon was the designated officer of Quality Real Estate Corporation, which held Department license number C/01997520 during that time.

Carrillo's License History

7. On November 6, 2004, the Department issued real estate salesperson license number S/01454833 to Carrillo (salesperson license). The salesperson license is active and is scheduled to expire on September 4, 2021, unless renewed.

8. From January 1, 2014, through April 19, 2016, Carrillo's employing broker was Leon.

9. From April 20, 2016, through July 14, 2017, and from September 5, 2017, through the present date, Carrillo's employing broker has been Quality Real Estate Corporation.

Carrillo's Failure to Appear at Hearing

10. On September 3, 2019, the Department sent a Notice of Hearing on Accusation to Carrillo. This Notice informed Carrillo of the date, time, and place of the January 21, 2020 hearing.

11. The Department's Notice of Hearing was mailed to Carrillo at 3852 E. Grand Ave., Pomona, CA, 91766, which is the address that Carrillo provided to the Department.

12. It was established that Carrillo received proper notice of the January 21, 2020 hearing.

13. Carrillo did not appear at the instant hearing.

The Judgment Against Leon and Carrillo

14. California Business and Professions Code (Code) section 10177.5 authorizes the Department to suspend or revoke any Department issued license, for acts taken during a transaction which required a license, when a final judgment is obtained in a civil action against a licensee, upon grounds of fraud, misrepresentation, or deceit.

15. In 2013, Carrillo was involved in a fraudulent real estate transaction, which involved the sale of land. Carrillo was the real estate agent for both the buyer and seller.

16. Carrillo knew that the "seller" of the land almost surely did not have valid title. Despite this knowledge, Carrillo took no action to confirm that the seller was the valid owner of the land. In fact, the seller in the transaction did not own the land.

17A. The transaction was conducted in a very unusual manner. The sale did not involve an escrow company or the purchase of title insurance. The sales price of the land was only approximately 15 percent of its reasonable value.

17B. Carrillo recorded the deed which purported to transfer ownership of the property. As a result of this transaction, a civil lawsuit was filed in the County of San Bernardino. The lawsuit involved numerous parties and a cross-complaint by the buyer, Gladys Mejia (Mejia).

18. On August 16, 2016, the Superior Court of California (court), County of San Bernardino, in case number CIVDS141370, entered judgment on Mejia's cross-complaint against Carrillo and Leon, doing business as Quality Real Estate.

19. The court found that Carrillo and Leon had committed fraud, malice and oppressive conduct. The court awarded \$100,000.00 in punitive damages against Carrillo and Leon, jointly and individually.

20. Leon testified at hearing. He contends that his license should not be disciplined because he was not involved in the transaction. Leon testified that he did not receive any money from the land sale. He testified that Carrillo did not inform him of the transaction or the lawsuit that followed. Leon testified that he was never served with any documents from the Superior Court.

21. Leon became aware of the land sale and the judgment against him no later than August 2019. Nevertheless, Leon did not take any action to contact the court or to challenge the judgment against him.

22. Leon did not establish and policies and procedures for his licensed salespersons. Leon did not actively supervise Carrillo. Leon only had contact with Carrillo when, and if, Carrillo contacted him. These interactions occurred when Carrillo wanted to show Leon the documents related to a real estate transaction that was closing. Leon testified that he believes it was not his responsibility to supervise Carrillo for real estate transactions which Carrillo performed "on his own."

23. Leon was unable to recall how many licensed salespersons are currently working under his broker license.

24. Leon did not offer any evidence of mitigation or rehabilitation.

Cost Recovery

25. The Department incurred investigation costs of \$1,454.50. The costs are reasonable based on the declaration of complainant.

26. The Department incurred enforcement costs of \$738.70. These costs are reasonable based on the declaration of Judith B. Vasan, Counsel.

27. Leon did not object to any of the costs sought by the Department. Leon did not offer any evidence that the costs sought by complainant should be reduced.

LEGAL CONCLUSIONS

1. The suspension or revocation of a professional real estate broker or salesperson license must be based on misconduct proven by clear and convincing evidence. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal. 4th 763, 788-789.)

2. The Department seeks to suspend or revoke Leon's broker license and Carrillo's salesperson license pursuant to Code section 10177.5, which states:

When a final judgment is obtained in a civil action against any real estate licensee upon grounds of fraud, misrepresentation, or deceit with reference to any transaction for which a license is required under this division, the commissioner may, after a hearing in accordance with the provisions of this part relating to hearings, suspend or revoke the license of such real estate licensee.

3A. In order to suspend or revoke a license pursuant to Code section 10177.5, the underlying civil judgment must involve a finding of fraud that is based on clear and convincing evidence. Generally, a judgment in a civil lawsuit is based on the lower preponderance of evidence standard. However, punitive damages can only be

awarded in a civil action if they are based on clear and convincing evidence. (*California Real Estate Loans, Inc. v. Wallace* (1993) 18 Cal.App.4th 157; *Grubb Company, Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494.)

3B. Punitive damages were awarded against Carrillo and Leon. The court's finding that Carrillo and Leon committed fraud was based on clear and convincing evidence because punitive damages were awarded. Therefore, Code section 10177.5 is applicable.

4. Cause exists to suspend or revoke Carrillo's real estate salesperson license, pursuant to Code section 10177.5. A final judgment in a civil action was entered against Carrillo. Carrillo acted as a licensed real estate salesperson for both the buyer and the seller during the transaction, which led to a civil lawsuit. In that case, the court found that Carrillo committed fraud and the judgment on Mejia's cross-complaint awarded punitive damages against Carrillo.

5. Cause exists to suspend or revoke Leon's real estate broker license, pursuant to Code section 10177.5. A final judgment in a civil action was entered against Leon. The court found that Leon committed fraud and the judgment on Mejia's cross-complaint awarded punitive damages against Leon.

6. Leon's testimony was unconvincing. There is no dispute that a judgment has been entered against him. Leon took no action to challenge the judgment after he became informed of it. As a licensed real estate broker, he should have known that having a judgment against him, which included a finding that he committed fraud and an award of punitive damages, was very serious.

7A. Leon contends that because he was not involved in the land sale transaction, he is therefore not responsible for Carrillo's actions. Leon also contends

that he had no knowledge of the lawsuit or the judgment that followed the transaction. Leon's contentions are without merit. As a licensed real estate broker, Leon has a duty to reasonably supervise the licensed real estate salespersons who are working under his broker license. A licensed real estate broker is responsible for monitoring all licensed salespersons working under his license.

7B. "Reasonable supervision" requires Leon to exercise control over the activities of his licensed salespersons. In order to reasonably supervise Carrillo, Leon should have established policies, rules, procedures, and systems to review, oversee, inspect and manage, his licensed salespersons and their handling of transactions requiring a real estate license, the documents related to those transactions which may have a material effect on the rights and obligations of a party to the transactions, and the handling of trust funds. (Cal Code Regs., tit. 10, section 2725, subds. (a), (b), and (d).)

7C. Leon did not establish policies or procedures for his licensed salespersons. Leon allowed Carrillo to perform transactions "on his own."

8. The judgment cannot be ignored. The court found that Leon committed fraud. Leon offered no evidence of mitigation or rehabilitation. The following order is required in order to protect the public.

9. The Department incurred enforcement costs of \$738.70 and investigative costs of \$1,454.50. These costs are reasonable.

ORDER

1. All licenses and licensing rights of respondent Carlos R. Carrillo under the Real Estate Law are revoked.
2. All licenses and licensing rights of respondent Humberto Leon under the Real Estate Law are revoked.
3. Respondents Carrillo and Leon shall reimburse the Department of Real Estate the sum of \$2,193.20, individually or jointly, for the costs of investigation and enforcement. Respondents shall pay these costs prior to applying for reinstatement or licensure.

DATE: February 19, 2020

DocuSigned by:
Christopher Ruiz
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CHRISTOPHER RUIZ

Administrative Law Judge

Office of Administrative Hearings