

**FILED**

**MAR 22 2022**

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

**DEPT. OF REAL ESTATE**

By 

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In the Matter of the Accusation of:	)	DRE No. H-41703 LA
	)	
WRIGHT REALTY GROUP INC., and	)	OAH No. 2021060545
	)	
<u>GIUSEPPI CUSUMANO</u>	)	
	)	
Respondent.		

DECISION

The Proposed Decision dated January 24, 2022, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker license is granted to Respondent.

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.

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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 APR 21 2022.

IT IS SO ORDERED 3.14.22

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

**In the Matter of the First Amended Accusation of:  
WRIGHT REALTY GROUP INC, GIUSEPPI CUSUMANO,  
individually and as former designated officer of  
Wright Realty Group Inc,  
Respondents.**

**Agency Case No. H-41703 LA**

**OAH No. 2021060545**

**PROPOSED DECISION**

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 29, December 1, and 2, 2021.

Kevin H. Sun, Counsel, represented Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate (DRE) (Complainant).

Thomas N. Jacobson, Attorney, represented Giuseppe Cusumano, individually and as former designated officer of Wright Realty Group Inc. (Respondent), who was present throughout hearing.

Respondent Wright Realty Group, Inc. (WRGI) did not appear at hearing. A default judgment was entered against WRGI by the DRE decision issued in this matter on January 7, 2021, effective February 11, 2021, revoking WRGI's license and license rights.

At hearing, the ALJ granted Complainant's unopposed motion to amend the Accusation at page 2, paragraph 4, subsection (a), to include the following paragraph, "On November 17, 2010, the Department issued Respondent a Mortgage Loan Originator license endorsement, National Mortgage Licensing System and Registry No. 251446. Respondent's Mortgage Loan Originator license endorsement is scheduled to expire in or about 2022." Complainant was ordered to file a First Amended Accusation incorporating the referenced amendment.

Oral and documentary evidence was received at hearing. The ALJ left the record open for Complainant to file Respondent's updated license certification and the First Amended Accusation by December 23, 2021. On December 17, 2021, Complainant filed Respondent's updated license certification, which was admitted as part of Exhibit 2. On December 20, 2021, Complainant filed the First Amended Accusation, which was admitted as part of Exhibit 1. The record was also left open for the parties to file closing briefs by December 23, 2021. On December 23, 2021, the parties filed their closing briefs, respectively marked as Exhibits 10 and KK.

The record was closed, and the matter was submitted for decision on December 23, 2021.

## SUMMARY

Respondent Cusumano is licensed by the Department as a real estate broker and holds a mortgage loan originator endorsement on his broker's license. The Department seeks to impose discipline action against all licenses and licensing rights of Respondent Cusumano based upon allegations that Respondent, as designated broker of WRGI, violated applicable statutory and regulatory law in handling WRGI trust funds and trust fund records.

Respondent Cusumano deflected all responsibility for any wrongdoing on WRGI, arguing that the violations pre-dated his tenure as WRGI's designated broker. Respondent Cusumano asserts that because he was motivated by altruism in continuing to act as WRGI's broker after he became aware WRGI's property management business practices violated DRE guidelines and regulations, his license and license rights should not be subject to discipline. Respondent Cusumano further asserts he is not liable for the actions of WRGI, and that he properly supervised and controlled WRGI's property management activities and those working under his license at WRGI, offering evidence in support of retention of his real estate license and license rights.

Complainant established at hearing through clear and convincing evidence that Respondent Cusumano violated Real Estate Laws. Based on the evidence in mitigation, the absence of prior license discipline, Respondent Cusumano's positive business reputation, the outright revocation of Respondent Cusumano's license and license rights is not warranted. A period of probation is necessary, however, to ensure sufficient protection of the public.

## FACTUAL FINDINGS

### Jurisdictional Matters

1. Complainant filed the October 20, 2020 Accusation and the superseding and operative December 2021 First Amended Accusation in her official capacity.
2. At all times relevant to the time period of the allegations contained in the First Amended Accusation, WRGI had license and license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code, as a real estate corporation, DRE license ID 01843565. DRE originally issued WRGI's corporate license on June 28, 2008. The license was scheduled to expire on October 3, 2022. WRGI's office address was 5015 Canyon Crest, #108, Riverside, California 92507. According to DRE's records, WRGI employed no salespersons under its real estate license.
3. WRGI defaulted on the Accusation, failing to file a notice of defense. Default was entered on November 12, 2020. A default judgement was entered against WRGI in this matter on January 7, 2021, effective February 11, 2021, revoking WRGI's license and license rights. As part of the default judgment, WRGI was found responsible to pay for DRE's investigation and audit costs incurred in the matter. WRGI is responsible for payment to DRE of \$1,730.40 in investigative and \$10,858.20 in audit costs, for a total of \$12,588.60.
4. Respondent Cusumano is presently licensed under the Business and Professions Code as a real estate broker, DRE license ID 01107933. DRE issued Respondent Cusumano's broker license on May 22, 1999. His license is scheduled to expire on May 21, 2023.

5. On November 17, 2010, DRE issued Respondent Cusumano a Mortgage Loan Originator (MLO) license endorsement, National Mortgage Licensing System and Registry No. 251446. His MLO license endorsement is scheduled to expire in 2022.

6. DRE presented no evidence of Respondent Cusumano's prior license discipline.

## **Background**

7. WRGI was primarily engaged in property management and managed approximately 42 properties for 36 property owners. WRGI collected rent receipts and security deposits in the amount of approximately \$1.1 million during 2018. WRGI charged six to ten percent of monthly rent or a flat fee of \$60 to \$150 for management fees.

8. Robert Wright owned and operated WRGI with his wife, Kathryn Wright. Robert Wright died in May 2018. During the relevant period, Kathryn Wright (Wright) was the Chief Executive Officer and Secretary of WRGI and owned 100 percent of WRGI. From January 1, 2018 to October 3, 2018, WRGI had no designated officer (DO). In June and July 2018, Elizabeth Inez Weibe helped Wright with WRGI's real estate activities, but was never WRGI's DO.

9. On August 2, 2018, Respondent Cusumano and Wright signed an agreement wherein he agreed to be WRGI's broker of record. On August 2, 2018, an application to become WRGI's DO was submitted by Respondent Cusumano to DRE. On August 6, 2018, WRGI sent a letter, signed by both Wright and Respondent Cusumano, notifying WRGI's clients and tenants that Respondent Cusumano was the new responsible broker.

10. Respondent Cusumano became the designated officer (DO) for WRGI on October 4, 2018. His WRGI DO tenure concluded on May 5, 2019. As DO, Respondent Cusumano was responsible for the supervision of the activities conducted on behalf of WRGI by its officers, agents, real estate licensees, and employees. (Bus. & Prof. Code, § 10159.2.)

11. Respondent Cusumano and WRGI, at all relevant times to the First Amended Accusation's allegations, were engaged in the business of, acted in the capacity of, advertised and assumed to act as a real estate corporation. (Bus. & Prof. Code, § 10131, subd. (b).) As part of their real estate activities, Respondent Cusumano and WRGI leased and rented real property and collected rent and security deposits for real property on behalf of others for compensation and in expectation of compensation.

### **DRE Audit No. SD 180023**

12. DRE auditor Zaky Wanis (Auditor Wanis) conducted an audit examination (Audit No. SD180023) of WRGI's property management activities which revealed a number of Real Estate Law violations by Respondent Cusumano and WRGI. His audit included books and records covering the period from January 1, 2018 through December 31, 2018 (audit period). Auditor Wanis prepared an audit report and credibly testified at hearing regarding his findings.

13. WRGI maintained five bank accounts for handling of the receipts and disbursements of client trust funds in connection with property management activities.



### **BANK ACCOUNT 1**

14. Bank Account 1 (BA 1) (account ending with "3792") was opened on November 19, 2018, with Wells Fargo Bank with the account name "Wright Realty Group Inc." BA 1 had two signatories: Respondent Cusumano and Wright. BA 1 was maintained to handle trust funds in the property management activity for multiple beneficiaries. BA 1 was opened to replace Bank Account 2 (BA 2). The first trust fund deposit to BA 1 was on November 19, 2018.

### **BANK ACCOUNT 2**

15. BA 2 (account ending with "0748") was opened with Wells Fargo Bank with the account name "Wright Realty Group Inc." BA 2 had two signatories. Robert G. Wright and Wright. BA 2 was maintained to handle trust funds in the property management activity for multiple beneficiaries. On November 19, 2018, BA 2 was closed.

### **BANK ACCOUNT 3**

16. On August 27, 2018, Bank Account 3 (BA 3) (account ending with "1043") was opened with BBVA Compass Bank with the account name "Wright Realty Group Inc." BA 3 had two signatories: Respondent Cusumano and Wright. BA 3 was maintained to handle trust funds in the property management activity for multiple beneficiaries. BA 3 was opened to replace Bank Account 4 (BA 4). The first trust fund deposit to BA 3 was on October 24, 2018.

### **BANK ACCOUNT 4**

17. BA 4 (account ending with "2304") was opened with Wells Fargo Bank with the account name "Wright Realty Group Inc." BA 4 had two signatories: Robert G.

Wright and Wright. BA 4 was maintained to handle trust funds in the property management activity for multiple beneficiaries. On October 24, 2018, all security deposit trust funds, totaling \$15,866.21, were withdrawn from BA 4 and deposited into BA 3.

### **BANK ACCOUNT 5**

18. Bank Account 5 (BA 5) (account ending with "5437") was opened on October 25, 2018 with US Bank with the account name "Wright Realty Group Inc." BA 5 had two signatories: Respondent Cusumano and Wright. BA 5 was maintained to handle trust funds in the property management activity for multiple beneficiaries. BA 5 was opened to replace BA 2. BA 5 was closed less than a month before it was opened, on November 13, 2018.

### **Respondent Cusumano Failed to Properly Handle Trust Funds**

19. As of December 31, 2018, there was a minimum trust fund shortage of \$1,345 in BA 1, which was missing funds from the 7972 Linares Avenue property. There was no evidence that WRGI and Respondent Cusumano were given written consent by the owners' trust funds to allow them to reduce the balance of the funds in BA 1 to an amount less than the aggregate trust fund liabilities of WRGI to all owners of the trust funds.

20. Based on Factual Finding 19, Respondent Cusumano failed to handle trust funds for beneficiaries in violation of Business and Professions Code (Code) section 10145 and California Code of Regulations (Regulations), Title 10, Chapter 6, section 2832.1.

21. Respondent Cusumano rectified the trust fund shortage and returned the \$1,345 to the consumer after he was notified of the shortage through DRE's audit.

### **Respondent Cusumano Failed to Properly Maintain Trust Fund Control Records and Separate Records for Each Beneficiary or Transaction**

22. From November 19, 2018, to December 31, 2018, Respondent Cusumano and WRGI failed to maintain complete and accurate control records and separate records for trust funds receipts and disbursements for BA 1 in connection with WRGI's property activities. For example, on several occasions, funds were deposited into BA 1 and not recorded in the control records, and vice versa. Similar issues arose with the separate records.

23. From October 4, 2018, to October 31, 2018, Respondent Cusumano and WRGI failed to maintain complete and accurate control records for trust fund receipts and disbursements for BA 2 related to WRGI's property activities. For example, control records occasionally did not match the account records of BA 2. Specifically, funds received were recorded in control records but were not deposited, or checks recorded as issued in the control records, but were not issued from BA 2. Similar issues were present in the separate records.

24. From October 4, 2018, to October 31, 2018, Respondent Cusumano and WRGI failed to maintain complete and accurate control records for trust fund receipts and disbursements for BA 4 in connection with WRGI's property activities. For example, some control records did not match BA 4's account records. Specifically, funds were disbursed from BA 4 but not recorded, or funds were received in BA 4 but not recorded. Similar issues were present in the separate records.

25. Based on Factual Findings 21 through 24, Respondent Cusumano failed to properly main trust fund control records in violation of Code section 10145 and Regulations section 2831 and separate records for each beneficiary and transaction in violation of Code section 10145 and Regulations section 2831.1.

### **Respondent Cusumano Failed to Maintain Trust Account**

#### **Reconciliation**

26. For October 2018, Respondent Cusumano and Wright did not maintain a complete and accurate monthly reconciliation of the balance for all separate beneficiary and transaction records to the balance of the records of all trust funds received and disbursed for BA 1, BA 2, and BA 4.

27. Based on Factual Finding 26, Respondent Cusumano failed to maintain trust account reconciliation in violation of Code section 10145 and Regulations section 2831.2.

### **Respondent Cusumano Failed to Properly Handle Trust Funds In Designating Trust Accounts**

28. BA 1, BA 2, BA 3, BA 4 and BA 5 were bank accounts used for handling the receipts and disbursements of trust funds in connection with WRGI's property management activities, but were not properly designated as trust accounts.

29. Based on Factual Finding 28, Respondent Cusumano's handling of trust funds and trust account designation violated Code section 10145 and Regulations section 2832.

## **Respondent Cusumano Failed to Properly Handle Trust Funds in Trust Account Withdrawals**

30. BA 1, BA 2, BA 3, BA 4, and BA 5 were accounts used for handling the receipts and disbursements of trust funds in connection with WRGI's property management activities. Respondent Cusumano allowed Wright, WRGI's owner and non-licensed employee, to be a signer on the accounts without fidelity bonds or insurance coverage.

31. Based on Factual Finding 30, Respondent Cusumano's handling of trust funds in trust account withdrawals violated Code section 10145 and Regulations section 2834.

## **Respondent Cusumano Commingled and Mishandled Trust Funds**

32. WRGI commingled its company's general funds with trust funds by transferring and depositing trust funds from BA 2 to WRGI's general business account (account ending with "1438") and disbursing trust funds from the general business account in October 2018.

33. Based on Factual Finding 32, Respondent Cusumano, as WRGI's DO when the commingling and mishandling occurred, violated Code sections 10145 and 10176, subdivision (e), and Regulations section 2832.

## **Respondent Cusumano Failed To Correct WRGI's Use of False and Unlicensed Fictitious Names**

34. It is undisputed that WRGI used false and unlicensed fictitious business names prior to Respondent Cusumano's tenure as WRGI's DO. However, during his

tenure as DO, from October 4, 2018, to December 31, 2018, WRGI continued to use the unlicensed fictitious business name of "Re/Max Fine Homes," "Re/Max Results," "Wright Realty Group," "The Wright Realty Group," and "WRG, Inc" without obtaining prior DRE permission. Respondent Cusumano was aware during his tenure as WRGI's DO of WRGI's use of the foregoing false and unlicensed fictitious names and failed to take reasonable steps to correct their use by, for example, filing an application with DRE to register the names.

35. Based on Factual Finding 34, Respondent Cusumano failed to correct WRGI's use of false and unlicensed fictitious names in violation of Code section 10159.5 and Regulations section 2731.

### **Respondent Cusumano Failed to Properly Supervise as WRGI's DO**

36. Based on Factual Findings 19 through 35, Respondent Cusumano failed to exercise adequate supervision and control over WRGI's property management activities conducted by WRGI's licensees and its employees, specifically the actions of Wright. In addition, Respondent Cusumano failed to establish policies, rules, procedures, and systems to review, oversee, inspect, and manage transactions requiring a real estate license and the handling of trust funds. Further, Respondent Cusumano failed to maintain accurate control records, separate records, and trust account reconciliation records during the audit period. In sum, Respondent Cusumano's failure to properly supervise as WRGI's DO constitute a violation of Code sections 10159.2 and 10177, subdivision (h), and Regulations section 2725.

### **Respondent's Defenses**

37. Respondent Cusumano deflects responsibility for WRGI's violations of Real Estate Laws on Wright and her deceased husband. According to Respondent

Cusumano, he agreed to help Wright because he knew her husband, Robert Wright, died in the summer of 2018 and Wright did not know what to do with her property management business, WRGI. He asserts that Wright misrepresented the condition of WRGI and had he known the disarray that WRGI's records were in, he would not have assumed the responsibility to become WRGI's DO.

38. Respondent Cusumano maintains that it is unfair under the circumstances for DRE to seek to discipline his license and license rights for Wright's misdeeds that predated his tenure as WRGI's DO. Respondent Cusumano further asserts that he stepped in as WRGI's DO without any expectation of buying WRGI or making money from his assistance of Wright. According to Respondent Cusumano, his only motivation in remaining WRGI's DO after he became aware of WRGI's various business practice issues and violations as of October 2018 and ongoing was to protect the consumers who were WRGI's landlords and tenants.

39. Respondent Cusumano testified that he first visited WRGI when he became the DO on October 4, 2018. (Erroneously referred to as "2017" in Exhibit KK.) Respondent Cusumano was aware from that October 4, 2018, visit that the following issues existed at WRGI: (1) the financial records were in complete disarray, including bank accounts which did not make sense and did not balance; (2) the records of tenant deposits were not in order, and it was very difficult to match up tenant deposits and the tracing within the bank accounts; (3) the financial records with regard to what was owed landlords was also in disarray and that it was very difficult to line up what the bank accounts held and what was owed to the landlords; (4) WRGI had been operating without a broker of record in violation of Real Estate Laws; (5) property management agreements were "in shambles" and were using trade names that did not apparently belong to Wright and Robert Wright; (6) leases were using trade names that did not

belong to Wright and Robert Wright; (7) leases and property management agreements were not in compliance with DRE fictitious business requirements; (8) Wright had made withdrawals from WRGI bank accounts for her personal use and the accounts did not balance because of her actions; (9) Wright did not disclose to Respondent Cusumano that she was not in compliance with bonding requirements; and (10) the business records were a mess and would require some time to straighten out.

40. Respondent Cusumano asserts that he could have walked away but that he chose to address WRGI's issues to assist the need of the landlords and tenants. He characterizes his decision as a choice motivated by "integrity" and dedication "to consumer protection." (Exhibit KK.) Even if Respondent Cusumano's claims of altruistic motivation are credited, he provided no reasonable explanation why he did not immediately report the financial irregularities and issues at WRGI's various violations of Real Estate Laws to DRE once he became the DO in October 2018.

41. Respondent Cusumano testified that WRGI's banking records were such a mess that he decided to open new bank accounts and segregate the accounts into different banks. Because Wright was the owner of the business, the banks required Wright to be a signatory on all the accounts. According to Respondent Cusumano, after the new accounts were open, and while Respondent Cusumano was at a meeting in Boston of the National Association of REALTORS® in November 2018, Wright unilaterally closed the BA 5 account when the bank demanded her tax returns. Respondent Cusumano was previously, however, aware of Wright's financial improprieties as early as October 2018, when Wright misused an ATM card and withdrew trust funds.

42. Respondent Cusumano asserted that his staff worked during October, November, and December 2018, without any compensation at WRGI to organize its



records, reconcile the finances, and correct business practices. Respondent Cusumano testified that he spent one weekend sifting through boxes with the help of Ms. Donnilyn Vasquez, who was employed as WRGI's bookkeeper since 2017, and his own assistant. Ms. Vasquez testified that she worked at WRGI four days a week, for 24 hours a week while Respondent Cusumano was WRGI's DO.

43. Respondent Cusumano argues that all the issues found during DRE's audit existed either at the time Respondent became DO, or in the case of the \$1,345 check, a situation created by Wright without the knowledge or consent of Respondent Cusumano.

44. In sum, Respondent Cusumano argues that all the deficiencies found by DRE's auditor during the audit period were created by Wright and/or Robert Wright and that his license and license rights should not be disciplined based on their wrongdoing and based on his good faith altruistic measures to help WRGI's customers.

45. Ronaldo "Tinker" Casada and Donna O'Donnell, both real estate professional and colleagues of Respondent Cusumano, testified as character witnesses in support of Respondent Cusumano's continued licensure. According to both witnesses, Respondent Cusumano's reputation in the real estate industry is positive, they endorse his ethics, and have had only positive business dealings with him.

### **Ultimate Findings**

46. Respondent Cusumano is a real estate industry veteran, with over 20 years of experience and is a leader in real estate organizations. During the October to December 2018 time period, in addition to acting as WRGI's DO, Respondent Cusumano was also running his own business, Pro-Open Investments, where he spent half of his time. He was also president of Inland Valley Realtor's Association, on the

board of directors for the California Association of Realtors (CAR), on CAR's property management committee, and on the Local Candidate Recommendation Committee (LCRC). Respondent Cusumano also testified that he was involved with various organizations approximately 350 to 400 hours per year while DO at WRGI.

47. Respondent Cusumano testified that he wanted to quit as WRGI's DO in October, November, and December 2018, but did not do so. He was aware of DRE's safe harbor reporting which would have allowed him to report WRGI's poor account keeping and Wright's conduct, but chose not to alert DRE of the issues at WRGI. Respondent Cusumano's characterization of his actions as a protection of the public is provided minimal credit based on the benefit Respondent Cusumano yielded for his own company as a result of his tenure as WRGI's DO.

48. Ms. Vasquez, WRGI's former bookkeeper, testified at hearing. She became licensed as a real estate person in October 2018. Her license is listed with Respondent Cusumano's company Pro-One Investments. She testified that after WRGI closed and after DRE's audit, approximately 10 to 15 WRGI clients transferred to use Pro-One Investments as their property management company, with the rental income of approximately \$150,000 per year. Accordingly, approximately a third to a half of WRGI's clients became Pro-One Investments clients.

49. Respondent Cusumano may not have been paid for his work at WRGI in 2018, but he certainly received financial gains when WRGI's clients became his company's clients. While it is clear Respondent Cusumano made a sincere effort to correct many of WRGI's record deficiencies and business practice irregularities during his tenure as WRGI's DO, his claims that his efforts did not result in his financial enrichment, accordingly, are contrary to fact.

50. Respondent Cusumano's claims that he only became aware of WRGI's issues in October 2018 is troubling. He signed a contract with Wright in August 2018, which allowed him two months to do his due diligence before assuming the legal duties and responsibilities as WRGI's broker of record. As an acknowledged and self-professed leader in the real estate field, Respondent Cusumano should have been aware of the responsibilities he was assuming as WRGI's DO. Having assumed the legal duties of a DRE DO, Respondent Cusumano does not convincingly plead ignorance and deflect responsibility for WRGI's existing issues as a means of escaping blame in this matter as WRGI's broker of record.

### **Costs**

51. Complainant has incurred enforcement costs in the amount of \$3715.20 in this matter; audit costs of \$10,858.20; and investigative costs of \$1,730.40. (Exhibits 4-6.) The costs are reasonable.

52. As set forth in Factual Finding 3, the repayment of audit and investigatory costs to DRE is the responsibility of WRGI. The remaining unpaid costs are the enforcement costs of \$3715.20.

53. Except as set forth in this Decision, all other allegations in the First Amended Accusation and all other contentions by the parties lack merit or constitute surplusage.

## LEGAL CONCLUSIONS

### Jurisdiction and Burden of Proof

1. Jurisdiction was established pursuant to Code section 10100, based on Factual Findings 1, 2, 4, and 5.

2. The burden of proof is on the Complainant to show that Respondent Cusumano's real estate broker's license and MLO license endorsement should be disciplined. To prevail in this matter, Complainant must establish the allegations against respondent through clear and convincing evidence, to a reasonable certainty. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853.)

### Applicable Statutes and Regulations

3. Code section 10131, subdivision (a), defines a real estate broker as "a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity."

4. Code section 10177, subdivision (h), states:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the

renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following: [11] . . . [11]

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

5. Section 10159.2 states:

(a) The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

(b) A corporate broker licensee that has procured additional licenses in accordance with Section 10158 through officers other than the officer designated pursuant to Section 10211 may, by appropriate resolution of its board of directors,

assign supervisory responsibility over salespersons licensed to the corporation to its broker-officers.

(c) A certified copy of any resolution of the board of directors assigning supervisory responsibility over real estate salespersons licensed to the corporation shall be filed with the Real Estate Commissioner within five days after the adoption or modification thereof.

6. Regulations section 2725 details the requirements of broker supervision of those operating under the broker's license and states:

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

(a) Transactions requiring a real estate license.

(b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.

(c) Filing, storage and maintenance of such documents.

(d) The handling of trust funds.

(e) Advertising of any service for which a license is required.

(f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.

(g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

7. Regulations section 2945.1 describes the effect of license discipline on a mortgage loan originator license endorsement and states:

Real estate license discipline, including a revocation, a suspension, a voluntary surrender of a real estate license, a public reproof, and/or a bar order, may be cause for the revocation and/or suspension of the real estate licensee's mortgage loan originator license endorsement. The disciplinary action on an existing license endorsement may

be imposed via the same process and within the same order as the license discipline.

8. Respondent Cusumano argues that he is not liable for WRGI's violations of DRE rules and guidelines and deflects all responsibility on WRGI's owner, Wright. (Factual Findings 19-35.) Respondent Cusumano's arguments that he bears no legal responsibility in this matter are unpersuasive. Respondent Cusumano was WRGI's acting DO when many of the violations occurred during the audit period, i.e., from October 2018 through December 2018. In addition, Respondent Cusumano is liable for Wright's and WRGI's actions based on the legal principles described below.

9. Generally, a licensee is responsible for the acts of agents acting in the course of the licensee's business, whether they are independent contractors or employees. Or, in this case, the owner of the licensee's business. This is true even when the licensee does not have actual knowledge of the agent's activities and does not authorize the unlawful acts. (*Randle v. California* (1966) 240 Cal.App.2d 254, 261.) Thus, a licensee was properly charged with submitting false statements in Medi-Cal billings that were done through an office manager without his review, and a pharmacist may be disciplined by the pharmacy board for the unlawful acts of his employee for illegally filling prescriptions. (*Heisenberg v. Myers* (1983) 148 Cal.App.3d 814, 824.) "If a licensee elects to operate his business through employees he must be responsible to the licensing authority for their conduct in the exercise of his license and he is responsible for the acts of his agents or employees done in the course of his business in the operation of the license." (*Arenstein v. State Board of Pharmacy* (1968) 265 Cal.App.2d 179, 192.) In *Cornell v. Reilly* (1954) 127 Cal.App.2d 1785, the court found the holder of a liquor license subject to license discipline when, without his knowledge



or direction, the manager of his business illegally hired girls for the purpose of soliciting drinks from the patrons of the bar.

10. Here, Respondent Cusumano was either aware as of the time he assumed his role as WRGI's DO from October 2018 or became aware shortly thereafter that Wright and WRGI were engaging in ongoing violations of DRE rules and regulations. (Factual Findings 19-35.) Nevertheless, he did not apprise WRGI's customers of the irregularities or DRE and continued to act as WRGI's DO. Respondent, as a licensee, cannot escape responsibility for statutory duties designed to protect the public from harm by pleading ignorance and delegating responsibility for the day-to-day operation of WRGI to its existing employees and Wright, the owner. (Factual Findings 36, 46, and 47.)

11. A broker is required to "actively conduct his brokerage business and to supervise the activities of his salesmen." (*Grand v. Griesinger* (1958) 160 Cal.App.2d 397, 406; *Horike v. Coldwell Banker Residential Brokerage Co.* (2016) 1 Cal.5th 1024, 1036-1037.) The term "salesmen" encompasses in this case WRGI and Wright, who were effectively acting under the license of Respondent Cusumano's broker license in conducting real estate activities at WRGI. (Factual Findings 2, 7, 8-11.)

12. Based on the foregoing, cause exists pursuant to Code sections 10177, subdivision (h), and 10159.2, and Regulations section 2725 to discipline Respondent Cusumano's license and license rights based on his violations of Real Estate Law. (Factual Findings 1-36.)

13. Due to discipline being imposed on Respondent Cusumano's DRE license and license rights, cause also exists pursuant to Regulations section 2945.1, to discipline Respondent Cusumano's MLO endorsement. (Legal Conclusions 7 and 13.)

## **Appropriate Discipline**

14. Respondent Cusumano has the burden of demonstrating rehabilitation. Criteria have been developed by DRE to evaluate the rehabilitation of a licensee who has committed a crime. Although Respondent Cusumano has not committed a crime, it is appropriate to evaluate his rehabilitation by reference to the applicable criteria found at Regulations section 2912. Respondent Cusumano has partially met some of the relevant rehabilitation criteria. Respondent Cusumano stopped acting as WRGI's DO in May 2019. (§ 2912, subd. (h). Respondent Cusumano made efforts to ensure that none of WRGI's consumers suffered financial losses. (§ 2912, subds. (b) and (g).) Respondent Cusumano also meets the most important rehabilitation criteria because it has been more than two years since the Real Estate Laws violations discovered in DRE's 2018 WRGI audit. Regulations section 2912, subdivision (a)(1), provides for passage of two years since the act or offense, which can be increased by considering the nature and severity of the crime and the licensee's history of criminal convictions that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. Respondent Cusumano presented no evidence that he has been involved in programs designed to provide social benefits or to ameliorate social problems. (§ 2912, subd. (j).)

15. Regulation section 2912, subdivision (m), calls for a change in attitude from the time of the criminal acts to the present, evidenced by: (1) evidence of rehabilitation from respondent; (2) evidence from family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns; (3) evidence from probation or parole officers or law enforcement officials regarding respondent's social adjustments; (4) evidence from psychiatrists, psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or

emotional disturbances; and (5) absence of subsequent convictions or other conduct which reflect an inability to conform to societal rules when considered in light of the conduct in question.

16. Respondent Cusumano demonstrated sincere remorse for the any actions by WRGI and Wright that may have negatively affected its customers. However, Respondent Cusumano clearly fails to understand how he violated his licensee duties by his negligent conduct, continuing to maintain that he provided adequate supervision and should not be held accountable for his willful ignorance and failure to promptly report WRGI's violations to DRE and promptly correct those violations. Accordingly, he has not demonstrated the necessary change in attitude that makes future recurrence of similar conduct unlikely by continuing to refute any responsibility for the violations of DRE law perpetrated under his license during his tenure as WRGI's DO. (§ 2912, subd. (m).)

17. Respondent Cusumano provided the evidence of business contemporaries attesting to his professional competence and good character. (Factual Finding 45.) "Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" can be helpful in determining whether a person seeking licensure is rehabilitated. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317-318.)

18. The facts establish that Respondent Cusumano's continued unrestricted licensure would not be in the public interest. In determining the appropriate discipline, the central question is what level of discipline is necessary to protect the public. Disciplinary proceedings to suspend or revoke a real estate license are not conducted for the primary purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) The acts underlying discipline of respondent's license are directly

related to the kinds of activities in which he may engage as a licensee of the Bureau. Further, Respondent Cusumano is charged with providing supervision to broker associates and salespersons operating under his license. His continued lack of understanding of his responsibilities as a real estate broker during his tenure as WRGI's DO, as well as his continued insistence that he is blameless in WRGI's DRE violations that were perpetrated under his license for the latter quarter of 2018 to the potential detriment of vulnerable consumers, demonstrate that Respondent Cusumano's continued licensure justifies an outcome where respondent may operate under a restricted broker license and MLO endorsement. In his favor, it is significant that Respondent Cusumano attempted to right some of WRGI's wrongs done under his license.

19. Outright revocation of all of Respondent Cusumano's license rights is not, therefore, warranted here based on Respondent's Cusumano's assuming responsibility for a company, WRGI, whose records were already in disarray in late October 2018 and whose owner, Wright, clearly stymied Respondent Cusumano's efforts to correct WRGI's business practices. Respondent Cusumano's lack of prior license discipline over the past 25 years and professional standing are also factors in favor of his retention of his license rights. The public interest would be adequately protected, accordingly, by a probation period, including the probationary condition that Respondent Cusumano complete a professional ethics course to ensure that he has sufficient future knowledge of the legal duties and responsibilities a broker assumes when he becomes a broker of record for a company engaged in real estate activities.

## Costs

20. Code section 10106 permits an ALJ to direct a licensee to pay the reasonable costs of investigation and enforcement. Complainant provided sufficient evidence to support an award of the costs of enforcement in the amount of \$3,715.20. (Factual Findings 51-52.) Based on the default judgment entered against WRGI, which included the award of the investigative and audit costs incurred in this matter, Respondent Cusumano repayment responsibility in this matter is limited to Complainant's enforcement costs.

21. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court set forth four factors to be considered: (1) Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. Applying the *Zuckerman* factors, it is reasonable to require Respondent Cusumano to pay DRE's \$3,715.20 in enforcement costs.

## ORDER

All licenses and licensing rights of respondent Giuseppe Cusumano under the Real Estate Law are revoked; provided, however, a restricted real estate broker license and conditional individual mortgage loan originator license endorsement, shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if he makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this decision. The

restricted license and conditional endorsements issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under the authority of Business and Professions Code section 10156.6:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction, including by a plea of nolo contendere, to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or license endorsement or for the removal of any of the conditions, limitations or restrictions of a restricted license or license endorsement until one year has elapsed from the effective date of this decision.

4. Respondent shall, within six months from the effective date of this decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license and MLO endorsement until respondent passes the examination.

5. Respondent shall, within three months of the effective date of this decision, pay the Commissioner's reasonable costs for enforcement of this disciplinary action in the amount of \$3,715.20.

6. Respondent shall, within six month from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal of real estate license and endorsement, taken and successfully completed the continuing education requirement of Article 2.5 of Chapter 3 of Real Estate for renewal of a real estate license, with said continuing education to include a course on designated broker responsibilities under Real Estate Law. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license and endorsement until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATE: 01/24/2022

*Irina Tentser*

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings