

FILED

DEC 19 2023

DEPT. OF REAL ESTATE

By



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-42236 LA
)	
DIVIDENDS XIII CAPITAL, and)	OAH No. 2022050789
TRACIE CAROLYN LOVE)	
Respondents.)	

DECISION

The Proposed Decision dated November 03, 2023, 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.

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 JAN 18 2024.

IT IS SO ORDERED 12/11/23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER


for Doug McCauley

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

In the Matter of the Accusation against:

DIVIDENDS XIII CAPITAL;

**ADRIAN LAVERNE BATES, as former designated officer for
Dividends XIII Capital;**

and

**TRACIE CAROLYN LOVE, as designated officer for Dividends
XIII Capital,**

Respondents.

Agency Case No. H-42236 LA

OAH No. 2022050789

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 10, 2023.

Julie To, Counsel appeared on behalf of Complainant Maria Suarez, Supervising Special Investigator, State of California (Complainant) in her official capacity.

Respondents Dividends XIII Capital (Respondent Dividends); and Tracie Carolyn Love (Respondent Love) did not appear and were not otherwise represented at the administrative hearing.

Adrian Laverne Bates (Bates) entered into a stipulated settlement and disciplinary order which is under consideration by the Department of Real Estate (DRE). Bates' license is not at issue in this matter and no findings are made as to Bates.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 10, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. Dividends was license by the DRE as a corporate real estate broker on October 10, 2014 with John Letts, Sr. as the designated officer. At the time, its main address of record was 16200 Ventura Blvd., #421, Encino, California and its mailing address was 22121 Clarendon Street, Unit 6840, Woodland Hills, California 91365 and a branch license at 22121 Clarendon Street, Unit 6404, Woodland Hills, California 91365.

2. John L. Lett, Sr. was the designated officer of Dividends until his death on April 5, 2017. At that time, the branch office license was cancelled effective April 5, 2017 and the main office mailing address was discontinued.

3. As of December 1, 2017, Bates (broker license number B0929036) served as the designated officer until August 13, 2020, at which time her designation was cancelled. During her tenure as designated officer, Dividends' main office address and mailing address was 2447 Pacific Coast highway, Second Floor, Hermosa Beach, California December 1, 2017.

4. On January 15, 2019, Respondent Love was issued real estate broker license B01291515. On June 12, 2020, Respondent Love's license was affiliated as a broker associate with Dividends. On June 13, 2020, Respondent Love discontinued her affiliated broker status with Dividends. At all times, Respondent Love's main office address was 2447 Pacific Coast Highway, Second Floor, Hermosa Beach, California 90254 and her mailing address was P.O. 3474, Manhattan Beach, California 90266. Respondent Love's license expired on January 14, 2023. Previously, on December 24, 2001 (DRE Case H-29144 LA), Respondent Love was denied a real estate sales license.

5. On March 28, 2014, Dividends filed its Articles of Incorporation of a General Stock Corporation ID 3661481 with the Secretary of State. The Articles of Incorporation listed Respondent Love as its incorporator and agent for service of process. On June 15, 2020, Dividends filed its Statement of Information (June 2020 Statement) with the Secretary of State listing 11325 Glenoaks Blvd., Pacoima, California 91331 as its principal office address and 1230 Rosecrans Ave. Second Floor, Manhattan Beach, California 90254 as its principal executive office. The June 2020 Statement listed Dividends' business as "Real Estate Firm" with Respondent Love as its Chief Execution Officer and Secretary. The June 2020 Statement was signed electronically by Respondent Love.

6. On July 6, 2020, Dividends filed a Statement of Information (July 2020 Statement). The Dividends' July 2020 Statement listed Dividends' business as

“Development and Management Company.” The July 2020 Statement removed Respondent Love as Secretary, but added Respondent Love as Director. The Statement was electronically signed by Respondent Love. Respondent Love was also the President and sole shareholder of Respondent Dividends.

7. On August 13, 2020, Respondent Love became the designated officer for Dividends. Effective August 13, 2020, Dividends’ main office address was changed to 1230 Rosecrans Boulevard, third floor, Manhattan Beach, California 90254 and its mailing address was changed to 11325 Glenoaks Boulevard, Pacoima, California 91331.

8. Respondent Dividends’ corporate real estate broker license expired on October 9, 2022 and Respondent Love’s designated officer status expired on October 9, 2022. Respondent Dividends’ “powers, rights and privileges” as a corporation were suspended by the California Franchise Tax Board on April 1, 2021, and have not been restored.

9. The Accusation in this matter was filed on February 28, 2022 and served on March 24, 2022. Timely Notices of Defense were filed. All jurisdictional requirements have been met.

Consumer Complaint

10. On April 22, 2020, the DRE received an online consumer complaint from a property owner (Borrower) regarding real estate mortgage loan activities conducted by Dividends and Respondent Love relating to Borrower’s real property located at 1824 Charles Street in Banning, California (Subject Property). Borrower’s complaint package included loan documents and settlement statements that Dividends and or Respondent Love provided to her with respect to a refinance of the Banning Property

performed by Dividends for Borrower. According to Borrower, Respondent Love was the sole Dividends contact with whom she communicated.

11. The essential complaint was that the Borrower refinanced the subject property with Respondent Love to whom she was referred by a friend. Respondent Love represented Borrower. The refinance transaction, conducted using private money and not a mortgage company or commercial lender, resulted in Borrower receiving substantially less from the loan proceeds than Borrower expected.

12. Respondent Dividends did not notify the DRE of the employment of Respondent Love during the period of January 1, 2019 to August 12, 2020 as a loan agent for Borrower in transaction 899087-TS. Respondent Dividends was listed as the Cooperating Broker on transaction 899087-TS representing Borrower and Rush My File, Inc. (RMF) was the broker representing the private investor. Respondents represented that they did not handle trust funds and did not maintain trust accounts during the audit period. The representation was false.

The Audit

13. To investigate the complaint, DRE initiated an audit of Respondents' books and records for the period of January 1, 2019 to February 28, 2021. The audit covered periods in which Bates and Respondent Love were the designated officers for Respondent Dividends.

14. The DRE auditor attempted to examine Dividends' books and records relating to its real estate activities to determine whether Dividends handled and accounted for trust funds and conducted its real estate activities in accordance with the Real Estate Law and the Commissioner's Regulations, Respondents did not provide

the complete records for the DRE's audit examination. Similarly, Respondents did not provide the books and records related to mortgage loan and escrow activities.

15. The DRE audit was limited to Dividends' mortgage loan and broker escrow activities and covered the broker escrow transaction file 899087-TS for the subject property. DRE obtained Respondents' banking records from financial institutions by subpoena. The DRE auditor subpoenaed and examined records from RMF, WFG National Title Company (WFG) and Wells Fargo Bank (WFB).

16. The DRE auditor prepared bank reconciliation with a cut-off date of December 31, 2019 for Dividends' Wells Fargo Bank Account #1 (B/A 1) in connection with Dividends' broker escrow activities based upon the records subpoenaed from WFB, RMF and WFG. According to the audit findings, B/A 1 was not set up and designated as a trust account in the name of "Dividends XIII Capital" as trustee. Instead, it was set up as "Dividends XIII Capital". The auditor concluded that there was a minimum trust fund shortage of \$424,887.10 in B/A 1 in connection with Dividends' broker escrow activities due to minimum unauthorized disbursements and conversion of funds.

17. Respondent Dividends and Respondent Love did not have written consent from the owners of the trust funds to reduce the balance of trust fund bank account B/A 1 to an amount less than the existing aggregate trust fund liabilities to all owners of the funds

18. Respondent Dividends and Respondent Love did not maintain a designated trust account. Instead, Respondents maintained only one account for brokerage activities including broker escrow/trust funds. Respondent Dividend and Respondent Love closed one broker escrow transaction and acted as a cooperating

broker for the related mortgage loan during the audit period which required a trust account. Respondents also handled receipt and disbursements of trust funds received from title companies on three transactions. The escrow activities were conducted by Tina Smith, a non-licensee.

19. Trust funds related to the subject property were wired to B/A 1 on March 12, 2019. The auditor requested the books and records for the period of January 1, 2019 to February 28, 2021 for examination from Respondents Dividend and Love. However, Respondents Dividend and Love did not provide the records. Instead the auditor obtained the records from WFB, WFG and RMF by subpoena. Records pertaining to subject property were included in the documents produced in response to the subpoena.

20. The auditor compared all final settlement statements and estimate settlement statements provided by lender RMG to those provided to the Borrower by Respondent Dividends. The auditor found discrepancies in the commission fee amounts, broker escrow fee amounts, payments to EBJT Investment firm, balance to due to the borrower and dates listed on the documents. The auditor found a discrepancy of \$21,774.29 between the "Charges and Proceeds to Borrower" in the copy of the Estate Settlement Statement dated March 19, 2019 that Borrower received from Respondent Dividends and the copy of the Estimate Settlement Statement provided by lender RMF.

21. The ending balance in B/A 1 as of March 11, 2019 was \$1752.69. On March 2, 2019, WFG wired \$145,980.27 of trust funds for the Borrower's escrow proceeds to B/A 1 for disbursement related to Borrower's loan escrow. On March 13, 2019, an online transfer of \$3,000 was made to Respondent Dividend's business market rate savings account #6509 lowering the bank balance to \$144,698.06. Other

disbursements for Respondent Dividends' business and personal expenses were paid out of B/A 1 that were not related to Borrower's escrow disbursements including but not limited to a March 14, 2019 online transfer in the amount of \$2,500 to EBJT Investment Firm LLC's business checking account #8634. Respondent Love is the "organizer" of EBJT Investment Firm LLC according to its October 9, 2019 Articles of Organization. As of March 18, 2019, the ending balance in B/A 1 was reduced to \$140,155.45, but no disbursements had yet been made to the Borrower. On March 19, 2019, a withdrawal in the amount of \$79,705.51 was made in a branch. On the same date, a cashier's check #7167602606 dated March 19, 2019 in the amount of \$71, 527.16 was purchased by Respondent Dividends. The cashier's check was made payable to Borrower. The remaining \$8,177.90 in trust funds are unaccounted for. From March 2019 to December 31, 2019, no disbursements were made from B/A 1 related to Borrower's escrow transactions. However, additional deposits from different title companies were made into B/A 1 during the audit period.

22. During the audit period, Respondent Dividends did not provide a written statement of all receipts and disbursements identifying the person or entity receiving the disbursements to each principal upon closing of the Borrower's escrow transaction. There was no evidence that a disclosure containing any of the information required by Business and Professions Code Section 10241, and/or a statement stating that the good faith estimate loan estimate does not constitute a loan commitment, were provided to Borrower by Respondent Dividends.

Costs

23. Audit Costs: Complainant provided a Certification of Audit Costs (Ex. 12) in the amount of \$13,347.28 consisting of 196 hours of auditor time at \$58 per hour,

22 hours of supervising auditor time at \$89 per hour and travel costs of \$21.28 (38 miles at 56 cents per mile.) The Audit Costs are deemed reasonable.

24. Investigative Costs: Complainant provided a Certification of Investigative Costs (Ex. 13) in the amount of \$6,467.80 consisting of 80.95 hours of special investigator time at \$79 per hour and .75 hours of supervising investigator time at \$97 per hour. The investigative costs are deemed reasonable.

25. Enforcement Costs: Complainant provided a Certification of Enforcement Costs (Ex. 14) in the amount of \$2,760 consisting of 28.75 hours of staff attorney time at \$96 per hour. The enforcement costs are deemed reasonable.

26. Respondents Dividends and Love offered no evidence in mitigation or rehabilitation. Additionally, there was no evidence that payment of the audit costs and costs of investigation and enforcement would be an undue financial burden or hardship on Respondents Dividend and Love.

LEGAL CONCLUSIONS

1. The standard of proof for complainant to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. The Department may discipline a license even if it is expired. (Bus. & Prof. Code, § 10103.)

///

First Cause for Discipline (Corporate Status-Respondent Dividends):

3. Cause exists for discipline of Respondent Dividends' license pursuant to Business and Professions Code section 10177, subdivisions (d), (f) and (g) in conjunction with California Code of Regulations, title 10, (CCR) section 2742, subdivision (c) by reason of factual findings 1-8 because Respondent Dividends' is a suspended corporation and not in good standing.

Second Cause for Discipline (Audit-trust fund violations-Respondents Dividends and Love):

4. Cause exists for discipline of Respondent Dividends' and Respondent Love's licenses pursuant to Business and Professions Code sections 10145, 10148, 10176, subdivision (a), (e) and (i) in conjunction with CCR, sections 2832, 2832.1, 2950, subdivisions (e) (g) and 2951 based upon factual findings 1-22 based upon Respondents' unlawful handling of trust funds and failure to retain records

Cause for Discipline (Respondent Love)

5. Cause exists for discipline of Respondent Love's license pursuant to Business and Professions Code sections 10177, subdivision (d) and (g) for willful disregard of the Real Estate Law and negligence by reason of factual findings 1-22 and Legal Conclusions 1-4.

6. Respondent Love offered no evidence in mitigation or rehabilitation and failed to provide any defense to the allegations. Under these circumstances, the DRE's public protection mandate requires that all licenses issued to Respondent Love be revoked.

///

Costs

7. Business and Professions Code section 10106 provides in pertinent part that in any order issued in resolution of a disciplinary proceeding before the DRE, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the Supreme Court directed the administrative law judge and the licensing agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Accordingly, the DRE must not assess the full costs where it would unfairly penalize any respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the DRE must consider a respondent's subjective good faith belief in the merits of his/her/its position and whether the respondents have raised a colorable challenge; the DRE must consider a respondent's ability to pay; and the DRE may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that respondent engaged in relatively innocuous misconduct. (See *Zuckerman, supra*, at p. 45.)

8. Here, Respondent Dividends and Love failed to cooperate with the investigation, thus requiring DRE to records and expend additional funds, did not prevail on any issues at hearing, showed no evidence of good faith belief in the merits of a defense, failed to appear for hearing and failed to present any evidence concerning financial wherewithal to pay costs. Pursuant to Factual Findings 1-26 above the reasonable costs of the investigation (\$6,467.80) and enforcement (\$2,760) of the case are \$9,227.80. The costs of investigation and enforcement shall be the

responsibility of Respondents Dividends and Love, individually and severally and paid as a condition of any application for reinstatement or licensure.

9. Business and Professions Code section 10148, subdivision (b) provides that the Commissioner shall charge a real estate broker for the cost of any audit, if the Commissioner has found in a final decision following a disciplinary hearing that the broker has violated Code Section 10145 or a related regulation or rule of the Commissioner. Pursuant to factual findings 1-26, the reasonable cost of audit are \$13,347.28 and shall be paid by Respondent Dividends.

ORDER

1. All licenses and licensing rights of Respondents Dividends and Love under the Real Estate Law are revoked.
2. Respondent Dividends shall pay audit costs in the amount of \$13,347.28 within 30 days of the effective date of this decision.
3. Respondents Dividends and Love shall pay \$9,227.80 in investigative and enforcement costs, individually or severally, as a condition of any application for reinstatement or licensure.

DATE: **11/03/2023**



GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings