

FILED

JUN 13 2024

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:	)	DRE No. H-42522 LA
	)	
ROSHAWN HELMANDI,	)	OAH No. 2023070216
	)	
Respondent.	)	

DECISION

The Proposed Decision dated April 26, 2024 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.

On page 4, paragraph number 10, "wrougth" shall now be spelled as "wrought".

On page 23, paragraph number 7, "(j) fraud or dishonest dealing)" shall be corrected to be "(j) (fraud or dishonest dealing)".

On page 24, paragraph number 9, "(Factual Rinding 25.) shall be corrected to be "(Factual Finding 25.)".

The Decision 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 (the Department) 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 July 3, 2024.

IT IS SO ORDERED 6/16/2024

Chika Sunquist
REAL ESTATE COMMISSIONER



By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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

In the Matter of the Accusation Against:

ROSHAWN HELMANDI,

Real Estate Broker License No.02073945,

Respondent.

Agency Case No. H-42522-LA

OAH Case No. 2023070216

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 14 and 15, 2023 and February 26-28, 2024.

Diane Lee, Real Estate Counsel, represented complainant Ray Dagnino, a Supervising Special Investigator of the State of California. Frank M. Buda, Attorney at Law, represented respondent Roshawn Helmandi, who was present all five hearing days.

Testimony and documents were admitted in evidence. Consistent with a March 5, 2024 Post-Hearing Order, the record remained open for submission of written

closing arguments. *Complainant's Closing Argument* is marked only for identification as Exhibit 39. *Respondent's Closing Argument* is marked only for identification as Exhibit QQ. The record closed and the matter was submitted for decision on March 29, 2024.

SUMMARY

Complainant seeks to discipline respondent's real estate broker license based on allegations respondent claimed ownership to commercial property erroneously deeded to him and his brother. The credible, competent evidence established respondent's dishonesty and lack of integrity. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order restricting respondent's license with terms and conditions.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 18, 2019, the Department of Real Estate issued Real Estate Broker license number 02073945 to respondent. The license, which has no history of prior discipline, expires on June 17, 2027, unless renewed.

2. On June 21, 2023, complainant, in his official capacity, made the Accusation, which was subsequently amended by interlineation at hearing. Paragraph 13 of the Accusation now states: "Starting in or about January 2022, Respondent and his brother, H.H., took possession of Parcel A and demanded Parcel A's tenants pay the rent to Respondent and H. H. As a result, from on or about February 1, 2022, through

the present, Parcel A's tenants, who were friends with Respondent and H. H., stopped paying the rent of \$4,950 per month to the Seller."

3. On June 28, 2023, respondent filed a *Notice of Defense on Accusation* acknowledging receipt of a copy of the Accusation, among other documents, and requesting a hearing to present a defense or matters in mitigation or extenuation to the allegations in the Accusation.

4. All jurisdictional requirements are satisfied.

Respondent and His Brother

5. Prior to becoming a licensed real estate professional, respondent managed his father's rental, residential properties. Respondent's current practice as a licensed real estate professional encompasses transactions in residential and commercial properties on behalf of "a handful of clients." Letters from respondent's professional associates, family members, and friends establish respondent enjoys a reputation for kindness, compassion, integrity, and adherence to ethical standards. (See Exhs. V, CC and FF.)

6. Since 2021, respondent has conducted his licensed real estate activities from an office located in his mother's house or "family home." The office is equipped with three or four desktop computers, two laptops, and printers. Respondent testified, "All my computers can access C.A.R. Forms." C.A.R. (California Association of Realtors) Forms are standardized agreements disclosures, and contracts real estate professionals use in real estate transactions. Respondent's family members, including his brother Haron Helmandi, who holds no real estate license, used the office and had unfettered access to its computers and laptops. Haron, based on his observation of respondent and others, knows how to complete C.A.R. Forms.

7. In 2021, Haron was employed as a manager at a solar company. Haron aspired to own commercial real estate to start a solar supply business.

The Business Center Drive Properties

8. Approximately 40 years ago, in two separate and distinct transactions, George and Debra Tash acquired ownership of two contiguous, unimproved real estate parcels located on Business Center Drive in Northridge, California. Each parcel was subsequently improved with the construction of commercial buildings. (See Exh. 5.) At hearing, Debra testified, "There are two buildings. I know that because my husband built them. There is a small space between them."

9. Parcel B, which consists of two units, was improved in 1977. Parcel B's designated address is 19438 and 19444 Business Center Drive. For tax purposes, Parcel B's Assessor Parcel Number (APN) is 2783-025-069.

10. Parcel A, which is situated at the corner intersection of Shirley Avenue and Business Center Drive, was improved in either 1978 or 1979. A black wrought iron fence surrounds Parcel A, which designated street address is 19450 Business Center Drive. Parcel A's APN is 2783-025-068.

11. In November 1985, ownership of Parcel A and Parcel B was transferred by quitclaim deed to the George and Debra B. Tash Intervivos Trust Agreement, dated November 25, 1985, amended and reinstated May 19, 1999 (Tash Trust), for which Tashes serve as trustees.

12. During the 20 years preceding 2023, business partners Edwin Dolgopyat and Jon-Paul Fortunati rented the commercial building on Parcel A from the Tash

Trust. Over the years, multiple tenants rented the commercial building on Parcel B from the Tash Trust.

13. During his tenancy, Dolgopyat attempted several times to purchase Parcel A. Nothing, however, came to fruition. Then, in 2021, the Tashes decided to sell Parcel A and Parcel B. Debra testified, "We decided to sell because my husband was in his 80s and wanted to invest closer to home." The Tashes informed Dolgopyat they were "selling the building," as Dolgopyat recalled the Tashes' phraseology, but he was not ready to proceed with any purchase transaction. Dolgopyat requested, and the Tashes granted him, a one-year grace period to get the purchase money for Parcel A. In the meantime, Dolgopyat and his business partner negotiated an extension of their lease agreement for Parcel A and continued making their monthly rental payments to the Tash Trust through January 2022.

THE SALE OF PARCEL B

14. Dolgopyat was acquainted with Haron through their mutual personal trainer. On occasion, Dolgopyat and Haron discussed Haron's interest in commercial real estate ownership. When Dolgopyat learned about the Tashes' plan to sell their property, Dolgopyat told Haron about it and offered to put Haron in touch with the Tashes. Haron knew about Dolgopyat's lease with the Tashes because Dolgopyat told Haron about the tenancy.

15. At hearing, Haron recalled telephoning George and discussing a \$2.6 million purchase price for Parcel B and telling George he "wanted to buy but was not financially ready." Haron recalled George stating he was waiting for the current tenant to vacate Parcel B. Haron further recalled George mentioning Parcel B's low ceilings and an unpermitted room addition, which served as a previous tenant's residence.

16. By means not clearly established by the evidence, Haron "found" the 19438 and 19444 addresses, called Los Angeles County Building and Safety, and "gave them the 19438 and 19444 addresses to get the APN." Haron used the 19438 and 19444 addresses to conduct a google search, which directed him to LoopNet, a commercial real estate website. The LoopNet web page entered in evidence as Exhibit KK purports to "contain[] information about the property located at 19438 Business Center Dr, Northridge, CA 91324." A "Primary Photo" depicts the exterior of Parcel A. A bird's eye view of a three-dimensional "Parcel Map" shows Parcel A, which is highlighted in a light blue color, and Parcel B, over which a red diamond-shaped insignia hovers. The LoopNet web page has no accompanying legend to discern the intended meaning of the light blue color highlight or red diamond-shaped insignia. At hearing, neither party ventured an explanation.

17. On April 15, 2021, Haron obtained a Restricted Market Data Appraisal Report (Appraisal Report), which is purportedly intended "to communicate the data and reasoning leading to the formulation of an opinion of value." The Appraisal Report includes a photograph of the façade of Parcel B, which is referenced as the "subject property." The Appraisal Report identifies the subject property as "Light Industrial Office Property in Fee Simple Located at 19438 Business Center Drive, Northridge, CA 91324," correctly lists the subject property's APN as "2783-025-069," and reports the subject property consists of a 7,982 square-foot building constructed in 1977. Based on a direct sales comparison approach, the Appraisal Report states the estimated value of Parcel B ranges between \$210 per square foot and \$230 per square foot (or \$1,676, 220 and \$1,835,860). (See Exh. 13.)

18. Although he "got [the Appraisal Report] to use in negotiations with George," at hearing Haron claimed he "didn't review [it]" because George, was "firm

with the \$2.6 million price” and had a “take it or leave it” position because “others were interested.” Haron testified, “I felt like an opportunity landed in my lap. It was a good time for me to purchase. So, I didn’t bother to look at the appraisal.” Haron intended to customize Parcel B for his solar supply and installation and contracting business start-up.

19. On April 22, 2021, Haron accessed respondent’s computer, downloaded, and completed a Commercial Property Purchase Agreement and Joint Escrow Instructions for the purchase and sale of “19438 & 19444 W Business Center Dr, situated in Northridge, California, 91324, Assessor’s Parcel No. 2783025069.” The purchase price offered is listed as “Two Million, Six Hundred Thousand” and “\$2,600, 000.” (Exh. 12.) The finance terms contemplated an initial deposit in the amount of \$30,000, an increased deposit in the amount of \$120,000, and a first loan in the amount of \$2,450,000. Haron as buyer agreed to “remove small upstairs room not part of original building at no cost to seller.” (*Id.* at p. 2 [A81].) The Tash Trust as seller agreed to pay the escrow fee, and “Chicago Title (Beth Lovelace)” is named as the Escrow holder. (*Id.* at p. 3 [A82].) No “Buyer’s Brokerage Firm” or “Seller’s Brokerage Firm” is identified or named. (See *id.* at p. 12 [A91].) A check appears in the box indicating “The parties each acknowledge receipt of a Disclosure Regarding Real Estate Agency Relationships (C.A.R Form AD).” (See *id.* at p. 1 [A80]). Haron’s signature alone appears on C.A.R. Form AD. (See *id.* at p. 20 [A99].)

20. On April 23, 2021, Haron and the Tashes, on behalf of the Tash Trust, executed the Commercial Property Purchase Agreement and Joint Escrow Instruction (April 23, 2021 Commercial Property Purchase Agreement).

21. It is not established by clear and convincing evidence respondent functioned as a licensed real estate broker or performed the duties and responsibilities

of a licensed real estate broker in connection with the negotiation and execution of the April 23, 2021 Commercial Property Purchase Agreement between Haron and the Tash Trust.

22. Beth Lovelace is a Certified Senior Escrow Officer with Chicago Title Company. On May 23, 2021, Lovelace took the "19438 and 19444 W. Business Center Drive, Northridge, CA 91324" address and APN 2783025069 from the executed April 23, 2021 Commercial Property Purchase Agreement and used that address and APN to prepare an Open Order Sheet, which in turn was used to open a 180-day escrow. Lovelace transmitted the Open Order Sheet to the title department at Chicago Title Company. The title department in turn conducted a title search, the process of inspecting public records, including deeds, tax liens, and court judgments, among others, to determine and confirm legal ownership. The title department generated a legal description that was automatically populated into all forms and documents necessary to complete the sale and purchase transaction and close escrow.

23. Debra recalled signing "a bunch of papers" at Lovelace's office on July 3, 2021. Debra testified, "I didn't read what I signed. I didn't read thoroughly the documents. It was a file of documents this thick." Debra demonstrated the thickness holding her hands approximately four or five inches apart.

24. The "transaction went slowly," according to Debra's testimony. She testified, "Haron didn't meet the contingencies; he didn't lift them in a timely manner, so we had to send him a letter to do so and to verify he had a lender." Haron explained the delay testifying, "My credit was not that good because someone opened a credit card in my name. I had to have credit repair. . . . I attempted to get loans but was not getting approved."

25. In late August 2021, the Tashes suggested a meeting. Respondent testified, "They wanted to meet face to face to confirm [Haron] was buying the building." Respondent accompanied Haron to the meeting. Respondent gave the Tashes his business card identifying himself as a "Broker/Developer" and listing the DRE license number as well as a Contractors State License Board number associated with his name. (See Exh. 14.) Respondent claimed giving the Tashes his business card as a matter of "business etiquette" because his name "is hard to pronounce and butchered a lot." Debra recalled respondent "doing most of the talking." According to Debra, respondent "talked about real estate deals," how he was "able to get financing," and that "he was acting to get his brother a loan because he was a broker." Respondent additionally expressed his "interest in buying Parcel A" from the Tashes. Debra told respondent "someone else wanted Parcel A." At hearing, respondent unconvincingly disputed Debra's account of his participation during August 2021 meeting claiming, "She lied."

26. During the August 2021 meeting, Haron gave the Tashes assurances telling them, "I'm going to proceed with the deal. I spent a lot of money on my credit repair so the deal can go forward." Debra recalled, "We were asked to evict tenants from [Parcel] B, which we did. From that point on everything went better. . . . They produced a lender. . . . We were able to complete the sale."

27. Friends of respondent, Shubryre Mohammed Humkar and Roohina Humkar, who were unacquainted with Haron, provided a six-month hard money loan for the sale and purchase of Parcel B on condition respondent became a co-buyer on the transaction. Respondent testified, "[Shubryre Mohammed Humkar] said, 'As long as you are on there, I'll lend at 7 to 7.5 percent.' I said, 'That's fine.' The amount was approximately \$2 million more or less. He knew me and trusted me. He didn't know

[Haron]. He knows I have a very expensive property in Malibu, so he knew I had something to come after." Respondent further testified, "I didn't intend to be compensated for getting the loan for Haron."

28. No documentation of the terms of the Humkar hard money loan for the purchase of Parcel B was entered into evidence.

29. On October 13, 2021, the Humkars, as beneficiary, obtained a Deed of Trust securing their interest until the monies loaned to respondent and Haron are repaid in full.

30. On October 14, 2021, escrow instructions were amended to add respondent as a buyer to the April 21, 2023 Commercial Property Purchase Agreement for Parcel B.

31. On October 19, 2021, escrow closed. All final or closing documents pertinent to the transaction identify both Haron and respondent as the "Buyer(s)" of "19348 and 19444 West Business Center Drive, Northridge, CA 91324." Debra testified, at the signing, she and George "just looked at the address" because "it was the [COVID] pandemic," George "was frail," and they "were frightened to be in a closed space."

32. It is established by clear and convincing evidence respondent functioned as a licensed real estate broker or performed the duties and responsibilities of a licensed real estate broker when respondent solicited the Humkars as lenders of the mortgage loan in connection with the sale and purchase of Parcel B.

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33. No evidence respondent received payment of commissions, fees, or other income in connection with respondent's activities securing a mortgage loan from the Humkars loan was offered at hearing.

34. No evidence respondent's Malibu real estate was actually used to secure the Humkars' mortgage loan or that such use constitutes prohibited commingling was offered at hearing.

35. It is not established by clear and convincing evidence money or property belonging to respondent was commingled with the money or property of others, in violation of Business and Professions Code section 10176, subdivision (e), as alleged in paragraph 14 of the Accusation.

36. It is not established by clear and convincing evidence respondent, in connection with the sale and purchase transaction for Parcel B, made false representations with the intention of inducing the Tashes' reliance thereon and on which the Tashes relied to their detriment, in violation of Business and Professions Code section 10176, subdivision (a), as alleged in paragraph 14 of the Accusation.

37. It is not established by clear and convincing evidence respondent, in connection with the sale and purchase transaction for Parcel B, engaged in conduct constituting fraud, deceit, or dishonest dealing, in violation of Business and Professions Code sections 10176, subdivision (i), and 10177, subdivision (j), as alleged in paragraph 14 of the Accusation.

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THE AGREEMENT FOR THE PURCHASE AND SALE OF PARCEL A

38. On October 14, 2021, the Tashes and Dolgopyat with his business partner executed a Commercial Property Purchase Agreement and Joint Escrow Instructions for the sale and purchase of "19450-19458-19454 Business Center Dr situated in Northridge, California, 91324, Assessor's Parcel No. 2783025069 [*sic*]." The purchase price offered is listed as "Two Million, Four Hundred Ninety-Six Thousand, Six Hundred Forty-Two" and "\$2,496,642." (See Exh. 29.) A 90-day escrow for that sale and purchase transaction opened the same day. (Exh. 30.) Escrow documents include a Preliminary Report with a Legal Description, which correctly states Parcel A's APN as 2783-025-068. (Exh. 30 at p. 31 [A612].)

39. Dolgopyat and his business partner continued to rent and occupy Parcel A while Parcel A was in escrow. Pending the resolution of the quiet title action discussed in Factual Findings 57 and 61, Dolgopyat and his business partner, on their own initiative, retained the monthly rent payable to the Tash Trust in a separate account.

40. It is not established by clear and convincing evidence respondent and Haron took possession of Parcel A, as alleged in paragraph 13 of the Accusation.

41. It is not established by clear and convincing evidence respondent and Haron demanded Parcel A's tenants pay the rent to them, as alleged in paragraph 13 of the Accusation.

42. On November 5, 2021, LifeLock alerted Debra that Parcel A had been transferred along with Parcel B to respondent and Haron. Debra testified, "I panicked." Debra immediately emailed Lovelace, among others, with the following subject

heading: "HUGE MISTAKE YOU MUST FIX ASAP-BETH YOU RECORDED ON BOTH OUR BUILDINGS !!!!!!" (Exh. N at pp. 4-5 [B169-B170].) The text of Debra's email states:

Beth I just discovered through a Lifelock (*sic*) alert . . . that you recorded against both of our buildings on Business Center Drive. You used two APN's but only one applied to the building that we were using you for escrow. You must send this up the chain right away to record this lien off 19450 Business Center Dr. We only sold 19438 Business Center Drive through your office

19438 Bus. Ctr. Dr. 2783-025-069-05-000

19450 Bus. Ctr. Dr. 2783-025-068-05-000

We want this to be handled by another escrow officer and we also want someone to finish the reserve exchange.

I can't tell you how much this has upset me.

(*Ibid.* at p. 5 [B170].)

43. Lovelace "felt mortified" when she learned Parcel A had been transferred to respondent and Haron with their purchase of Parcel B. Lovelace reached out to Kim Nelson, the Senior Title Officer at Chicago Title Company, for an explanation. After completion of an internal investigation, Nelson informed Lovelace, even though the purchase and sale transaction between the Tashes and respondent and Haron involved only Parcel B, the legal description and APN 278-3025-068 associated with Parcel A were erroneously auto-populated and unintentionally incorporated into escrow

generated documents, including the legal description, preliminary report, grant deed, trust deed, and title policy, among others, for Parcel B.

44. Lovelace testified, "The purchase agreement is to control, not the escrow instructions." Lovelace admitted, "I didn't pay attention to APN numbers before the Tashes contacted me about the errors. . . . I didn't confirm parcel numbers or property addresses."

45. It is undisputed the escrow document errors resulting in the unintentional transfer of Parcel A with Parcel B to respondent and Haron originated from a scrivener's error at Chicago Title Company.

46. It is not established by clear and convincing evidence respondent, in connection with the erroneous transfer of Parcel A along with Parcel B, made false representations with the intention of inducing the Tashes' reliance thereon and on which the Tashes relied to their detriment, in violation of Business and Professions Code section 10176, subdivision (a), as alleged in paragraph 14 of the Accusation.

47. It is not established by clear and convincing evidence respondent, in connection with the erroneous transfer of Parcel A along with Parcel B, engaged in conduct constituting fraud, deceit, or dishonest dealing, in violation of Business and Professions Code sections 10176, subdivision (i), and 10177, subdivision (j), as alleged in paragraph 14 of the Accusation.

48. It is not established by clear and convincing evidence respondent, in connection with the erroneous transfer of Parcel A along with Parcel B, engaged in conduct constituting negligence or incompetence, in violation of Business and Professions Code section 10177, subdivision (g), as alleged in paragraph 14 of the Accusation.

49. It is not established by clear and convincing evidence respondent, in connection with the erroneous transfer of Parcel A along with Parcel B, engaged in conduct constituting a disregard or violation of Real Estate Law, in violation of Business and Professions Code section 10177, subdivision (d), as alleged in paragraph 14 of the Accusation.

50. To correct the escrow document errors, Nelson prepared corrective instruments consisting of a corrective Grant Deed, Request for Partial Reconveyance, Substitution of Trustee and Partial Reconveyance for execution by respondent, Haron, and the Humkars. Between November 7 and 30, 2021, Lovelace made multiple unsuccessful attempts by phone and email to contact respondent, Haron, and the Humkars to obtain their notarized signatures for the corrected documents. The subject line in Lovelace's email to respondent and Haron communicated urgency. "CAN ONE OF YOU CALL ME, I HAVE A FEW URGENT ITEMS PLEASE, INCORRECT LEGAL ON THE GRANT DEED AND TRUST DEED" and "URGENT PLEASE TO RE SIGN CORRECTIVE DOCUMENTS." (See Exh. 22.)

51. Haron initially responded informing Lovelace he was out of town but subsequently did not follow up with her. Neither respondent nor the Humkars responded to Lovelace.

52. Then and at hearing, respondent and Haron claimed the escrow instructions and documents the escrow instructions generated accurately reflect the agreement of the Tashes to sell and their purchase of both Parcel A and Parcel B. Haron testified, "I never saw the property until after escrow closed. . . . The buildings were not separated; it's one big building. . . . When escrow closed I believed I bought the entire building. . . . I know I bought both buildings. . . . I paid \$2.6 million for A and B. . . . I went into the deal with the intention of buying A and B. I did get A and B."

Respondent testified, "The mistake was with Haron's drafting of the purchase agreement, not [with] the escrow instructions."

53. These claims are without merit because they are not supported by the credible evidence. From the very first time Haron learned from Dolgopyat the Tashes was contemplating a sale, Haron obtained identifying information about Parcel B, including its legal description and assigned APN 2783-025-069. (Factual Findings 16 and 17). Haron used Parcel B's identifying information to draft the April 23, 2021 Commercial Property Purchase Agreement, which he executed as buyer and to which respondent was subsequently added as a buyer. (Factual Finding 20 and 30.) At the time of the August 2021 meeting, in the presence of Haron, the Tashes made clear to respondent that Parcel A was not on the market. The Tashes had already offered Parcel A to Dolgopyat and his business partner. Significantly, even before escrow closed on the Tashes' transaction for respondent and Haron's purchase of Parcel B, Tashes had already executed a commercial property purchase agreement to transfer ownership of Parcel A to Dolgopyat and his business partner. (Factual Findings 31 and 38.) Haron knew about Dolgopyat's tenancy in Parcel A because Dolgopyat informed Haron about that tenancy. (Factual Finding 14.) Notably, during the August 2021 meeting, the only tenancy discussed in anticipation of consummating the April 23, 2021 Commercial Property Purchase Agreement was the eviction of tenants from Parcel B. (Factual Finding 25.)

54. Respondent's testimony dismissing the terms of the April 23, 2021 Commercial Property Purchase Agreement for Parcel B he jointly executed with Haron calls into question respondent's knowledge of fundamental real estate principles as a licensed real estate professional. As Lovelace accurately testified, the terms of that

commercial purchase agreement are controlling and it contains an accurate description and identification of the subject property—Parcel B.

55. A reasonable inference drawn from the credible evidence in combination with these factually unsupported claims is that respondent (and Haron) sought to take advantage of the scrivener's error originating with the Chicago Title Company to assert an ownership interest in Parcel A.

56. It is established by clear and convincing evidence respondent's conduct asserting an ownership interest in Parcel A under the facts and circumstances in this case evinces dishonesty and an absence of good faith, as alleged in paragraph 15 of the Accusation.

THE CIVIL ACTIONS

57. On December 15, 2021, the Tashes commenced a civil action in the Los Angeles Superior Court against respondent, Haron, and the Humkars to, among other things, quiet title to Parcel A, declare the Tashes' interest in Parcel A paramount to the interests of others, namely respondent, Haron and the Humkars, and reform the Parcel B grant deed and trust deed erroneously referencing Parcel A's legal description and APN. (See Exh. 16.)

58. Haron's preference was for unwinding the executed April 23, 2021 Commercial Property Purchase Agreement for the sale and purchase of Parcel B. Haron testified, "I felt stuck in this situation. . . . I wanted to see if I could get my money back and we can fix everything and [the Tashes] can walk away. I can pay back the \$2 million hard money loan that I'm paying interest on. . . . They [meaning the Tashes] didn't want to unwind everything."

59. Debra explained the Tashes objections to unwinding or rescinding the sale and purchase transaction. Debra testified, "We didn't like it because we didn't have cash to unwind the deal. The money was in another property. So, we didn't have money to unwind the deal." Nonetheless, the complaint in the civil action discussed in Factual Finding 57 was amended to allege, in the alternative, respondent and Haron acquired both Parcel A and Parcel B and the executed April 23, 2021 Commercial Property Purchase Agreement should be rescinded on the ground of mutual mistake of fact. (See Exh. 17.)

60. In late 2022, on a date not established by the evidence, respondent, in his licensed real estate broker capacity, listed Parcel B for sale after Haron expended approximately \$250,000 renovating Parcel B, including, among other things, demolishing the walls demarcating Parcel B's two interior units; removing the pre-existing, unpermitted addition previously used as a residence; repairing leaking portions of Parcel B's roof; and installing around Parcel B exterior fencing similar to that surrounding Parcel A. (See Exhs. Y and Z.) Respondent listed Parcel B for \$3,300,000. (Exh. 19.)

61. On January 5, 2023, the Los Angeles Superior Court enjoined respondent, Haron, and the Humkars from conveying, selling, encumbering, hypothecating, or otherwise attempting to transfer Parcel B. (See Exh. 18.) Debra explained wanting to settle the dispute over Parcel A before any resale of Parcel B.

62. George died during pendency of the quiet title action leaving Debra as the sole and successor trustee of the Tash Trust. Debra testified, "I wanted to be finished with this [meaning dispute over Parcel A's ownership]. It was very stressful."

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63. On May 9 and 23, 2023, respondent and Haron and Debra, respectively, executed a Settlement Agreement and Mutual General Release (Agreement and Release) agreeing Debra would cause payment in the amount of \$99,000 to respondent and Haron 20 days after respondent and Haron delivered a fully executed and notarized Quit Claim Deed conveying fee title to Parcel A to the Tash Trust; file a Stipulation for Entry of Judgment Quieting Title to Parcel A in favor of the Tash Trust; and authorize the release of rent payments in connection with Dolgopyat and his business partner's tenancy and occupancy of Parcel A to the Tash Trust. (See Exh I.)

64. The terms of the Agreement and Release have been satisfied. (See e.g., Exhs. II, JJ, and HH.)

THE SUBSEQUENT SALES OF PARCEL A AND PARCEL B

65. The quiet title action precluded closure of the 90-day escrow in connection with the sale and purchase agreement for Parcel A between the Tashes and Dolgopyat and his business partner because the Tashes were unable to transfer a clear title to them. Debra testified from the time of the 90-day escrow to the time the quiet title action settled, "interest rates went up," thereby adding to Dolgopyat and his business partner's cost of borrowing to purchase Parcel A. Debra explained Dolgopyat and his business partner threatened to sue. Consequently, Debra "had to take back paper," meaning she became the mortgagee for Dolgopyat and his business partner's purchase money loan for Parcel A. The escrow in connection with Dolgopyat and his business partner's purchase of Parcel A closed in June 2023.

66. After settlement of the quiet title action, respondent and Haron sold Parcel B for \$2,900,000.

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Costs of Investigation and Enforcement

67. The Department incurred costs of investigation and enforcement totaling \$9,320.05.

68. Neither party presented evidence of respondent's finances or ability to pay a cost award.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. Complainant bears the burden of proving by clear and convincing evidence to a reasonable certainty that a respondent engaged in conduct warranting suspension or revocation of his or her real estate license. (See *The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.)

2. Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

Statutory Provisions on Which Complainant Relies

3. Business and Professions Code section 10176, which authorizes investigations and enumerates grounds for disciplinary action, in pertinent part provides the following:

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(a) Making any substantial misrepresentation. [11] . . . [11]

(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her. [11] . . . [11]

(i) Any other conduct, whether of the same or of a different character than specified in this section, which constitutes fraud or dishonest dealing.

4. Business and Professions Code section 10177, which enumerates further grounds for disciplinary action, in pertinent part provides the following:

The commissioner may suspend or revoke the license of a real estate licensee . . . or may suspend or revoke the license of a corporation . . . if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock who has done any of the following[:] [11] . . . [11]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 100000) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2. [11] . . . [11]

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(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license. [¶]

(j) Engaged in any other conduct, whether of the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing.

Discussion

5. "A real estate broker . . . is a person who, for 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 buyers of, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of real property or a business opportunity. [¶] . . . [¶] (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity." (Bus. & Prof. Code, §10131.)

6. Prior to August 2021, respondent did not perform the duties or functions of a licensed real estate broker in connection with the negotiations for sale and purchase of Parcel B. (Factual Finding 21.) The established facts are that Haron on his own initiative negotiated that transaction with the Tashes and Haron's efforts culminating in the executed April 23, 2021 Commercial Property Purchase Agreement. (Factual Findings 15 through 20.)

7. In August 2021, respondent performed the duties and functions of a licensed real estate broker in connection with the sale and purchase of Parcel B when

respondent successfully solicited the Humkars to provide a hard money loan. (Factual Findings 27 through 32.) In connection with respondent's discharge of these broker duties and functions, complainant failed to prove by clear and convincing evidence respondent engaged in conduct, acts, or omissions constituting violations of Business and Professions Code sections 10176, subdivisions (a) (making substantial misrepresentations), (e) (commingling), (i) (fraud or dishonest dealing) and 10177, subdivision (d) (disregard or violation of Real Estate Law), (g) (negligence or incompetence), (j) fraud or dishonest dealing), as alleged in paragraph 14 of the Accusation. (Factual Findings 35 through 37.)

8. It is undisputed the erroneous transfer of Parcel A along with Parcel B was caused by a scrivener's error at Chicago Title Company. (Factual Findings 43 and 45.) In connection with that erroneous transfer, complainant failed to prove by clear and convincing evidence respondent engaged in conduct, acts, or omissions constituting violations of Business and Professions Code sections 10176, subdivisions (a) (making substantial misrepresentations), (i) (fraud, deceit, or dishonest dealing) and 10177, subdivision (d) (disregard or violation of Real Estate Law), (g) (negligence or incompetence), (j) fraud or dishonest dealing), as alleged in paragraph 14 of the Accusation. (Factual Findings 46 through 48.)

9. Following the unintended transfer of Parcel A along with Parcel B, respondent attempted to retain ownership of Parcel A. To take advantage of the mistake, respondent asserted the meritless claim that erroneous escrow documents prevailed over the terms of the April 23, 2021 Commercial Property Purchase Agreement. Respondent claimed the erroneous escrow documents properly expressed the Tashes' intent to sell both Parcel A and Parcel B to his brother. Respondent endorsed the claim his brother always intended to purchase both Parcel A and Parcel B

placing blame on his brother's contract drafting rather than the scrivener's error. (Factual Findings 52 through 56.) Respondent was not honest and his dishonesty recurred at hearing. Respondent called Debra a liar for accurately recounting how she informed him Parcel A was off market because someone else wanted Parcel A. (Factual Finding 25.) As stated in *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176, "[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice." Complainant proved by clear and convincing evidence respondent engaged in conduct, acts, and omissions constituting dishonesty and an absence of good faith, as alleged in paragraph 15 of the Accusation.

Level of Discipline

10. Six statutory categories complainant alleges respondent violated in the Accusation were not proven. (See Legal Conclusions 7 through 8.) The proven allegation is limited to conduct, acts, and omissions constituting dishonesty and an absence of good faith. (See Legal Conclusion 9.) Respondent has been a licensed real estate professional since 2019. Respondent has no history of prior violation or discipline. (Factual Finding 1.) Respondent's demonstrated dishonesty undermines the integrity he may have possessed for licensure. The several character reference letters in which respondent's professional associates, family members, and friends vouch for him are carefully considered. (See *Werner v. State Bar of Cal.* (1954) 42 Cal.2d 187, 196-197 and *Preston v. State Bar of Cal.* (1946) 28 Cal. 2d 643, 650-651.) Under all the circumstances of this case, a restricted license is consistent with public protection and maintenance of the integrity and high standards of real estate professionals. (See generally *Harrington v. Department of Real Estate* (1989) 214 Cal. App.3d 394 [in an unrelated context discussing the standards of the real estate profession].)

Cost Award

11. Business and Professions Code section 10106 authorizes recovery of the Department's prehearing investigation and enforcement costs.

12. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Department must exercise its discretion to reduce or eliminate cost so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Department] must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Department, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and whether the licensee has raised a colorable defense. The Department must also consider the licensee's ability to make payment.

13. Based on the credible, competent evidence offered at the hearing only a small fraction of the overall allegations in the Accusation were established by clear and convincing evidence. (Legal Conclusions 6 through 9.) In such situations, *Zuckerman* does not support a cost award.

14. The Department shall not recover its costs of investigation and prosecution in agency case number H-42522 LA.

15. All factual and legal arguments asserted in the Accusation, during the hearing, and in written closing arguments that are not addressed herein are unsupported by the evidence, irrelevant, without merit, or constitute surplusage.

ORDER

All licenses and licensing rights of respondent Roshawn Helmandi under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent 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 issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code.

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 or 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 nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months 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 real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the 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: 04/26/2024

Jennifer Russell

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings