

FILED

NOV 21 2019

DEPARTMENT OF REAL ESTATE
By Pj dew

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-6701 SAC
)	
LG SERVICING, INC. and)	OAH No. 2019050388
THOMAS ELLIOTT MECKENSTOCK,)	
)	
Respondents.)	

DECISION

The Proposed Decision dated October 23, 2019, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

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

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 DEC 12 2019.

IT IS SO ORDERED November 12, 2019

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation Against:

LG SERVICING, INC. and

THOMAS ELLIOT MECKENSTOCK

Respondents.

Case No. H6701 SAC

OAH No. 2019050388

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on September 25, 2019, in Oakland, California.

Counsel Megan Lee Olsen represented complainant Chika Sunquist, Supervising Special Investigator, State of California, Department of Real Estate.

Leslie Holmes, Attorney at Law, represented respondents LG Servicing, Inc. and Thomas Elliot Meckenstock.

The record closed and the matter was submitted on September 25, 2019.

At hearing, complainant submitted a request for a protective order sealing Exhibits 5 and 6 on the basis that they contained personal financial information and were too voluminous to practically redact. Respondents did not object. Good cause was established and on October 14, 2019, the undersigned issued the requested protective order.

FACTUAL FINDINGS

1. On August 9, 2018, complainant Chika Sunquist, acting in her official capacity as a Supervising Special Investigator, State of California, Department of Real Estate (Department), issued the accusation. Respondents LG Servicing, Inc. (LGSI) and Thomas Elliot Meckenstock (Meckenstock) timely filed notices of defense and this proceeding followed.

2. On January 13, 2011, the Department issued a real estate broker corporation license to LGSI. That license was in effect at all relevant times and will expire on June 15, 2023, unless renewed.

3. On July 20, 1984, the Department issued a broker license to Meckenstock. On March 9, 1993, that license was revoked and a restricted broker license was issued to Meckenstock. The restricted license was in effect at all relevant times and will expire on March 8, 2021, unless renewed. Since October 16, 2015, and at all relevant times, Meckenstock was the designated broker officer of LGSI.

2017 Audit

4. From October 9 through 16, 2017, Department auditor Jayendra P. Barbhaiya conducted an audit of the accounting and other records related to the

mortgage loan and property management activities of LGSI for the period January 1, 2016, through September 30, 2017 (audit period). Respondents cooperated with the audit. Barbhaiya issued a report dated November 22, 2017 and testified at hearing.

5. On May 6, 2013, LGSI notified the Department that it met the criteria for threshold broker reporting status as set forth in section 10232 of the Real Estate Code.¹ On November 26, 2013, LGSI notified the Department that it met the criteria for multi-lender reporting status as set forth in section 10238. LGSI maintained threshold broker reporting status and multi-lender reporting status at all relevant times.

6. During the audit period, LGSI operated and managed a mortgage loan brokerage. LGSI negotiated and serviced private investor loans, soliciting both borrowers and lenders for compensation. LGSI serviced hundreds of loans with principal amounts totaling tens of millions of dollars.

7. In the course of those activities during the audit period, LGSI:

a. Failed to timely submit to the Department the trust account review (TAR) report for the fiscal year 2016, as required by sections 10232.2, subdivision (a), and 10238, subdivision (p). It was received more than two months late.

¹ All statutory references are to the Business and Professions Code unless otherwise stated.

b. Failed to timely submit to the Department the 2016 annual business activity report, as required by sections 10232.2, subdivision (c), and 10238, subdivision (o). It was received more than six months late.

c. Failed to timely submit to the Department the quarterly trust account report for the second quarter of 2017, as required by section 10238, subdivision (k)(3). It was received more than two months late.

d. Failed to retain evidence in two single investor loan transactions that lender purchaser disclosure statements were delivered to investors before they became obligated to make the loan, as required by sections 10232.4 and 10238, subdivision (l), and in violation of section 10148.

e. Failed to retain evidence in two multi-lender loan transactions that lender purchaser disclosure statements were delivered to investors before they became obligated to make the loan, as required by sections 10232.4 and 10238, subdivision (l), and in violation of section 10148.

f. Failed to retain evidence in two sales of existing notes that lender purchaser disclosure statements were delivered to purchasers before the receipt by or on behalf of the broker of any funds from the purchaser of the note, as required by sections 10232.4 and 10238, subdivision (l), and in violation of section 10148.

g. Failed to record assignments of a deed of trust in the name of the purchasers within 10 business days after funds were paid to LGSI or the seller received any funds from the buyer, as required by sections 10234 and 10238, subdivision (g).

h. Failed to obtain a statement from lenders/investors in two multi-lender loan transactions regarding their investment not exceeding 10 percent of their net income or adjusted gross income, as required by section 10238, subdivision (f); and

i. Failed to obtain from lenders in two multi-lender loan transactions information relating to investor questionnaires to determine investor suitability, as required by section 10232.45.

8. Barbhaiya found no violations pertaining to LGSI's accounting for or handling of trust funds or property management activities.

Post-Audit Period Violation

9. LGSI failed to timely submit to the Department the 2017 mortgage loan business activity report, as required by sections 10232.2, subdivision (c), and 10238, subdivision (p). It was due on March 31, 2018, and received on September 22, 2019, three days before this hearing, more than 18 months late.

Matters in Aggravation

10. LGSI failed to timely submit to the Department the 2018 annual business activity report, as required by sections 10232.2, subdivision (c), and 10238, subdivision (o). It was due on March 31, 2019, and received on September 22, 2019.

11. LGSI failed to timely submit to the Department the quarterly trust account report for the second quarter of 2019, which was due by July 31, 2019, as required by sections 10232.25. It was due on March 31, 2019, and received on September 9, 2019.

Prior Administrative Action

12. Effective March 9, 1993, the Department issued a decision revoking the broker's license of Meckenstock, but issuing a restricted broker's license on conditions and limitations, including that he complete the continuing education requirements for renewal of a real estate license. That decision was based upon a finding that Meckenstock was convicted in 1991 of a violation of Penal Code section 484/488 (petty theft), a misdemeanor, in connection with an incident where field passes to a college football game were supposed to have been left for him at a will call booth, and when he learned that they were not, he took other tickets without permission.

Respondents' Evidence

13. Meckenstock testified at hearing. He manages LGSI with the assistance of its vice president and an office manager. He understands that it is his role to ensure that LGSI complies with the Real Estate Law. He reviews every document before it is submitted to the Department.

14. Meckenstock does not dispute the Department's allegations. He attributes the violations to errors, a failure to modernize, and poor performance of the office manager. He reports that, after the October 2017 audit, he had quarterly meetings with LGSI's vice president and office manager regarding compliance. However, compliance problems persisted, so the office manager was terminated on January 31, 2019. An interim manager was hired and LGSI is currently seeking a permanent replacement. LGSI now uses an electronic calendar. Meckenstock reports that, as of February 1, 2019, compliance is a priority.

15. As to the failure to secure required investor questionnaires, Meckenstock reports that, after the audit, LGSI began sending the blank documents to investors

with a self-addressed, stamped envelope, but investors would not always return the documents. LGSI recently implemented a system to electronically sign documents, which Meckenstock believes will help ensure compliance.

Costs

16. Complainant requests \$6,760.92 in investigation and enforcement costs, consisting of \$4,536 in audit costs, \$266.92 in other investigation costs, and \$1,958 in prosecution costs reflecting time spent on this matter by counsel for the Department. That request is supported by sworn statements that comply with the requirements of California Code of Regulations, title 1, section 1042. In the absence of any argument or evidence to the contrary, complainant is found to have reasonably incurred \$6,760.92 in the investigation and enforcement of this matter.

LEGAL CONCLUSIONS

First Cause for Discipline (Respondent LGSI)

1. The Department may discipline the license of a real estate licensee who willfully disregarded or violated the Real Estate Law or demonstrated negligence or incompetence in performing licensed activity. (§ 10177, subs. (d) & (g).) LGSI violated numerous Real Estate laws by: failing to timely file the 2016 TAR report, the 2016 annual business activity report, and the quarterly trust account report for the second quarter of 2017; failing to retain evidence in two single investor and two multi-lender loan transactions; failing to retain evidence of delivery of lender purchaser disclosure statements; failing to timely record assignments of a deed of trust in the name of the purchasers; and failing to obtain two different kinds of suitability statements or questionnaires from lenders and investors. (Factual Finding 7.) Those acts also

constitute negligence or incompetence in performing licensed activity. Cause exists to discipline LGSI's corporation license under section 10177, subdivisions (d) and (g).

Second Cause for Discipline (Respondent LGSI)

2. Cause also exists to discipline LGSI's corporation license under section 10177, subdivisions (d) and (g), by reason of the matters set forth in Factual Finding 9, failing to timely submit the business activity report due on March 31, 2018.

Third Cause for Discipline (Respondent Meckenstock)

3. The Department may discipline the license of a broker licensee who, as the officer designated by a corporate licensee, failed to exercise reasonable supervision and control of the activities of the corporate licensee. (§ 10177, subd. (h).) "Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage" licensed transactions and important transactional documents. (Cal. Code Regs., tit. 10, § 2725.) Further, a "broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems." (*Ibid.*) Meckenstock was the designated broker officer of LGSI and required to exercise reasonable supervision of its licensed activities. (Factual Finding 3.) LGSI violated many provisions of the Real Estate Law over a significant period of time, including violations that occurred after the October 2017 audit and violations that persisted almost to the September 25, 2019 date of hearing. (Factual Findings 7–9.) Meckenstock's attribution of blame to the office manager does not establish a defense. Cause exists to discipline Meckenstock's broker license under section 10177, subdivision (h).

Determination of Discipline

4. Cause for discipline having been established, the remaining issue is what level of discipline is required to protect the public. (§ 10050.1 ["protection of the public shall be paramount"].) Rehabilitation factors include the time elapsed, correction of the responsible business practice, and subsequent misconduct. (Cal. Code Regs., tit. 10, § 2912.) At hearing, complainant recommended revocation of LGSI's corporate license with the right to apply for a restricted corporate license and revocation of Meckenstock's broker license with the right to apply for a restricted sales license. Respondents argued that, at most, LGSI should be required to designate a new officer and Meckenstock be prohibited from serving in that role for LGSI.

LGSI provided evidence of new personnel, technology, and procedures designed to ensure future compliance with the Real Estate Law. No client funds were mishandled and there was no actual harm to a client. However, LGSI violated many provisions of the Real Estate Law over a significant period of time and those violations included failures to timely record assignments of a deed of trust in the name of the purchasers, failures to communicate with clients as required to determine investor suitability, as well as failures to timely file required reports to the Department. After the October 2017 audit, LGSI's violations persisted almost to the September 25, 2019 date of hearing. That continued misconduct undercuts respondents' evidence of rehabilitation and casts serious doubts upon respondents' willingness or ability to operate lawfully. Public protection requires revocation of respondents' licenses, with the right of LGSI to apply for a restricted corporate license and of Meckenstock to apply for a restricted salesperson license.

Costs

5. Pursuant to Business and Professions Code section 125.3, complainant may request an administrative law judge to order a licensee found to have violated the licensing act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. Complainant proved reasonable costs of enforcement in the amount of \$6,760.92. (Factual Finding 16.)

6. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether costs should be assessed in the particular circumstances of each case. The Department must consider whether to do so will unfairly penalize the licensee who has committed misconduct, but who has used the hearing process to obtain a dismissal or a reduction in the severity of the discipline imposed, as well as whether the licensee will be financially able to pay the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.* at pp. 44–45.) Respondent failed to establish cause for a reduction of the cost award.

ORDER

Respondent LGSI

1. All licenses and licensing rights of respondent LG Servicing, Inc. under the Real Estate Law are revoked; provided, however, a restricted real estate broker corporation license shall be issued to respondent pursuant to section 10156.5 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 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6:

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.

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.

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.

Respondent Meckenstock

2. All licenses and licensing rights of respondent Thomas Elliot Meckenstock under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 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 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6:

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.

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.

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.

Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the
performance by the restricted licensee relating to activities for which a real estate
license is required.

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
Meckenstock fails to satisfy this condition, the Commissioner may order the
suspension of the restricted license 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.

Both Respondents

3. Respondents LG Servicing, Inc. and Thomas Elliot Meckenstock, jointly
and severally, shall pay the Department of Real Estate \$6,760.92 for the reasonable
costs of investigation and enforcement of this matter.

DATE: October 23, 2019

DocuSigned by:
Michael C. Starkey
28451CFC37284CA...

MICHAEL C. STARKEY

Administrative Law Judge

Office of Administrative Hearings