

FILED

AUG 27 2013

BUREAU OF REAL ESTATE

By James B. Dwan

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)

THOMAS H. MURRIN,)
EDMILL ENTERPRISES, INC.; and)
EDWARD U. SOHN, individually and as)
designated officer of Edmill Enterprises Inc.,)

Respondents.)

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)
) DRE No. H-37886 LA
) OAH No. 2012031287
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DECISION AFTER REJECTION

This matter came on for hearing before Glynda B. Gomez, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on December 10, 2012.

Lissete Garcia, Counsel, represented Maria Suarez, Deputy Real Estate Commissioner of the State of California (Complainant).

THOMAS H. MURRIN was present at hearing and represented himself. Attorney Frederick Lee represented EDMILL ENTERPRISES, INC. and EDWARD U. SOHN, who was present at the hearing.

1 Oral and documentary evidence was received and the record remained open until
2 January 9, 2013 for the submission of mitigation documents by Respondent MURRIN. The
3 matter was submitted for decision on January 9, 2013.

4 On March 27, 2013, the Administrative Law Judge rendered a Proposed
5 Decision, which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the
6 Government Code of the State of California, Respondents were served with notice of my
7 determination not to adopt the Proposed Decision of the Administrative Law Judge along with a
8 copy of said Proposed Decision. Respondents were notified that I would decide the case upon
9 the record, the transcript of proceedings held on December 10, 2012, and upon any written
10 argument offered by Respondent and Complainants.
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12 I have given careful consideration to the record in this case including the
13 transcript of the proceedings of December 10, 2012.
14

15 The Factual Findings in the Proposed Decision dated March 27, 2013, of the
16 Administrative Law Judge of the Office of Administrative Hearings are hereby adopted.

17 The Conclusions of Law in the Proposed Decision dated March 27, 2013, of the
18 Administrative Law Judge of the Office of Administrative Hearings are hereby adopted, with
19 the exception of the conclusions in Paragraph 20. The victims in this case can only be
20 adequately protected if Respondents' licenses will be indefinitely suspended in the event they
21 fail to pay full restitution to Joon Yoon and Yoon Kim. A more substantial suspension is
22 warranted for Respondents EDMILL ENTERPRISES, INC. and EDWARD U. SOHN, in light
23 of the significant financial loss consumers experienced when EDMILL ENTERPRISES, INC.
24 and EDWARD U. SOHN permitted an unlicensed individual to solicit prospective tenants.
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1 The Order shall be as follows:

2 ORDER

3 I

4 All licenses and license rights of Respondent THOMAS H. MURRIN under the
5 Real Estate Law are revoked.

6 II

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8 All licenses and license rights of Respondent EDMILL ENTERPRISES, INC.
9 under the Real Estate Law are suspended for a period of sixty (60) days from the effective date
10 of this Decision; provided, however, that thirty (30) days of said suspension, shall be stayed for
11 two (2) years upon the following terms and conditions:

12 a. Respondent shall obey all laws, rules and regulations governing the rights,
13 duties and responsibilities of a real estate licensee in the State of California; and

14 b. That no final subsequent determination be made, after hearing or upon
15 stipulation, that cause for disciplinary action occurred within two (2) years of the effective date
16 of this Decision. Should such a determination be made, the Commissioner may, in his discretion,
17 vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should
18 no such determination be made, the stay imposed herein shall become permanent.

19 III

20 If Respondent EDMILL ENTERPRISES, INC. petitions, an additional 30 days
21 shall be stayed upon condition that:

22 a. Respondent pays a monetary penalty pursuant to Section 10175.2 of the
23 Code at the rate of \$100 for each day of the suspension for a total monetary penalty of \$3,000.

24 b. Said payment shall be in the form of a cashier's check or certified check
25 made payable to the Recovery Account of the Real Estate Fund. Said check must be received by
26 the Bureau prior to the effective date of the Decision in this matter.

27

1 b. Said payment shall be in the form of a cashier's check or certified check
2 made payable to the Recovery Account of the Real Estate Fund. Said check must be received by
3 the Bureau prior to the effective date of the Decision in this matter.

4 c. No further cause for disciplinary action against the real estate license of
5 Respondent occurs within two years from the effective date of the Decision in this matter.

6 d. If Respondent fails to pay the monetary penalty in accordance with the
7 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
8 immediate execution of all or any part of the stayed suspension in which event the Respondent
9 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
10 Bureau under the terms of this Decision.

11 f. If Respondent pays the monetary penalty and if no further cause for
12 disciplinary action against the real estate license of Respondent occurs within two years from the
13 effective date of the Decision, the stay hereby granted shall become permanent.

14 VI

15 Respondent EDWARD U. SOHN shall within six (6) months from the effective
16 date of the Decision herein, take and pass the Professional Responsibility Examination
17 administered by the Bureau including the payment of the appropriate examination fee. If
18 Respondent fails to satisfy this condition, the Commissioner may order suspension of
19 Respondent's license until Respondent passes the examination.

20 VII

21 Respondents THOMAS H. MURRIN, EDMILL ENTERPRISES, INC. and
22 EDWARD U. SOHN shall submit proof satisfactory to the Commissioner of payment of
23 investigative and prosecution costs in the amount of \$3,192.35 within six months of the effective
24 date of this decision. The Commissioner may suspend the licenses of Respondents EDMILL
25 ENTERPRISES, INC. and EDWARD U. SOHN pending a hearing held in accordance with
26 California Government Code Section 11500, et seq., if payment is not timely made as provided
27 for herein, or as provided for in a subsequent agreement between Respondents and the

1 Commissioner. The suspension shall remain in effect until payment is made in full or until
2 Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or
3 until a decision providing otherwise is adopted following a hearing held pursuant to this
4 condition.

5 VIII

6 Respondents THOMAS H. MURRIN, EDMILL ENTERPRISES, INC. and
7 EDWARD U. SOHN, shall, within six (6) months from the effective of the Decision herein,
8 provide proof of payment of restitution of \$9,000 to Yook Kim and \$10,000 to June Yoon
9 (hereinafter "the victims") as follows:

10 (a) Respondents shall deliver or mail the restitution payments, by certified mail, return
11 receipt requested, to the victims' last addresses on file with, or known to Respondents.

12 (b) If the payment is returned by the Post Office marked "unable to deliver," Respondents
13 shall employ a locator service (that may include or be limited to the Internet or other database
14 retrieval search) to try and locate the victims. Repayment shall then be made to the addresses
15 recommended by the locator service.

16 (c) If unable to effect repayment after using a locator service, Respondents shall provide
17 reasonable proof satisfactory to the Commissioner of their efforts to comply with the provisions
18 of this Paragraph.

19 (d) If the Commissioner determines that proof to be unsatisfactory, he shall so advise
20 Respondents, and indicate what additional reasonable efforts should be made to make repayment
21 to the victim(s).

22 (e) If Respondents fail to satisfy this condition, the Commissioner may order suspension
23 of Respondents' licenses until Respondents effects compliance herein; and

24 (f) Restitution payments not made to the victim(s) shall escheat to the State of California.

25 IX

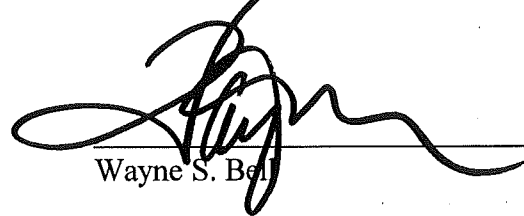
26 If and when Respondent THOMAS H. MURRIN makes a petition application for
27 reinstatement of a his license, the Real Estate Commissioner will consider as one of the criteria

1 of rehabilitation, whether or not restitution has been made to any person who has suffered
2 monetary losses through "substantially related" acts or omissions of Respondent THOMAS H.
3 MURRIN.

4 This Decision shall become effective at 12 o'clock noon on SEP 16 2013.

5 IT IS SO ORDERED 8/16/2013.

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7 REAL ESTATE COMMISSIONER

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10 Wayne S. Bell

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MAY - 3 2013

DEPARTMENT OF REAL ESTATE
BY: CR

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

THOMAS H. MURRIN,
EDMILL ENTERPRISES, INC., and
EDWARD U. SOHN, individually and
as designated officer of Edmill Enterprises, Inc.,

Respondents.

No. H-37886 LA

OAH No. 2012031287

NOTICE

TO: THOMAS H. MURRIN, EDMILL ENTERPRISES, INC., and EDWARD U. SOHN,
individually and as designated officer of Edmill Enterprises, Inc., Respondents, and
FREDERICK LEE, Attorney for EDMILL ENTERPRISES, INC. AND EDWARD U. SOHN.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated
March 27, 2013, of the Administrative Law Judge is not adopted as the Decision of the Real
Estate Commissioner. A copy of the Proposed Decision dated March 27, 2013, is attached for
your information.

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1 In accordance with Section 11517(c) of the Government Code of the State of
2 California, the disposition of this case will be determined by me after consideration of the record
3 herein including the transcript of the proceedings held on December 10, 2012, any written
4 argument hereafter submitted on behalf of Respondents and Complainant.

5 Written argument of Respondents to be considered by me must be submitted
6 within 15 days after receipt of the transcript of the proceedings of December 10, 2012, at the
7 Los Angeles office of the Department of Real Estate unless an extension of the time is granted
8 for good cause shown.

9 Written argument of Complainant to be considered by me must be submitted
10 within 15 days after receipt of the argument of Respondents at the Los Angeles office of the
11 Department of Real Estate unless an extension of the time is granted for good cause shown.

12 DATED: 4/29/2013

13 REAL ESTATE COMMISSIONER

14 
15
16 Wayne S. Bell

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation against:

THOMAS H. MURRIN,
EDMILL ENTERPRISES, INC., and
EDWARD U. SOHN, individually and as
designated officer of Edmill Enterprises, Inc.,

Respondents.

Case No. H-37886 LA

OAH No. 2012031287

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on December 10, 2012, in Los Angeles, California. Lissette Garcia, Real Estate Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California (Complainant). Respondent Thomas H. Murrin (Respondent Murrin) represented himself. Frederick Lee, Attorney at law, represented Respondent Edmill Enterprises, Inc. (Respondent Edmill) and Respondent Edward U. Sohn, individually, and as designated officer of Edmill Enterprises, Inc. (Respondent Sohn).

Oral and documentary evidence was received, and argument was heard on December 10, 2012. The record remained open until January 9, 2013 for the submission of mitigation documents by Respondent Murrin. Documents were not received, the record was closed, and the matter was submitted for decision on January 9, 2013.

FACTUAL FINDINGS

1. Maria Suarez, Deputy Real Estate Commissioner (Complainant), filed the Accusation in her official capacity as Deputy Real Estate Commissioner of the State of California. The Accusation was amended by interlineation at hearing on page 4, line 11; page 6, line 3; page 8, line 11 to replace "licensing" with "leasing."

2. The Department of Real Estate (DRE) issued Real Estate Broker license number 0034188 to Respondent Sohn on November 10, 1993.

3. DRE issued real estate corporation license number 01209953 to Respondent Edmill on April 16, 1997, with Respondent Sohn as its designated officer pursuant to Business and Professions Code (Code) section 10159.2. Team Spirit Realty is part of Edmill.

4. DRE issued Real Estate Salesperson license number 01173645 to Respondent Murrin on January 5, 1994. Respondent Murrin was employed by broker Timothy Ryan Whitacre¹ from August 21, 2007 until Whitacre's license expired on January 25, 2011. Murrin also ran a leasing business known by the name of Retail Leasing Services (RLS) which was not licensed by DRE. Respondent Murrin had been a corporate leasing agent with the Macerich Company for 20 years before starting RLS in 2001. Respondent Murrin no longer lives in California and is not in the real estate business.

5. DRE issued Real Estate Salesperson license number 01403735 to Sang W. Kim² from December 23, 2003 to December 23, 2007. The license expired on December 24, 2007.

6. Respondent Murrin met Sang W. Kim at an event for real estate professionals. Sang W. Kim represented to Respondent Murrin that he had several Korean clients who wished to lease space in malls for their small businesses and franchises. Sang W. Kim wanted to negotiate an arrangement with Respondent Murrin wherein Sang W. Kim would get a finder's fee for referring clients to Respondent Murrin.

7. Sang W. Kim worked with Team Spirit Realty until his real estate salesperson license expired in 2007. Team Spirit Realty has four offices and, at one time, had as many as 250 agents. Most of the employees are affiliated with Respondent Sohn's church. Team Spirit Realty has managers in each office. When Sang W. Kim's license expired, he was terminated from employment with Team Spirit Realty. In 2008, Sang W. Kim approached Team Spirit Realty about affiliating with the company as an "independent broker." According to Respondent Sohn, this meant that Sang W. Kim would affiliate with Team Spirit Realty through the use of cooperative advertising and be allowed to use space in the office. In exchange for affiliation, Sang W. Kim was to provide training to Team Spirit Realty salespersons and seminars on real estate and business opportunities in the food service sector as a consultant. Sang W. Kim also had a side business known as JK Consulting.

8. Sang W. Kim represented to Respondent Sohn and the Team Spirit Realty manager that he had a real estate broker's license. When the manager checked the DRE website he found a real estate broker's license for Son Won Kim, and the manager believed the license belonged to Sang W. Kim. Neither Respondent Sohn

¹ Whitacre is not a named respondent in the Accusation.

² Sang W. Kim is not a named respondent in the Accusation.

nor any representative of Edmill or Team Spirit Realty required Sang W. Kim to provide them with his original broker's license certificate or his license pocket card. Had they asked for his real estate original license certificate, they would have discovered that he did not have one and was not licensed.

June Yoon Transaction

9. Sang W. Kim had an arrangement with Team Spirit Realty wherein he was able to advertise under the Team Spirit Realty logo with other Team Spirit Realty salespersons. Sang W. Kim placed an advertisement in the June 1, 2009 Korean Times, a Korean language newspaper with a large circulation, as part of an arrangement of cooperative advertising that he had with Team Spirit Realty. His advertisement appeared to be and was part of the advertisement for Team Spirit Realty. The advertisement was for the lease of a retail space located in the Cerritos Mall in Cerritos, California. Jackie Yoon (Yoon) read the advertisement and contacted Sang W. Kim. Yoon was interested in leasing the space for a Seattle's Best Coffee franchise. Sang W. Kim arranged for Yoon to meet with Respondent Murrin and instructed her to sign a contract with Murrin to negotiate the lease.

10. Yoon met with Respondent Murrin, and on June 1, 2009, signed a contract for Respondent Murrin to represent her in negotiations with the Cerritos mall. Yoon paid a \$10,000 fully refundable advance fee to Respondent Murrin and his company, RLS, to represent her. Respondent Murrin and Sang W. Kim split the \$10,000 equally amongst themselves.

11. Respondent Murrin negotiated on Yoon's behalf to lease retail space in the Cerritos mall, but, despite substantial work, was unable to obtain a lease for her. Sang W. Kim represented Yoon in negotiation with Seattle's Best Coffee. He represented to Yoon, Seattle's Best Coffee, and Respondent Murrin that he was an agent of Team Spirit Realty. He advertised under the Team Spirit Realty logo, had business cards with the Team Spirit Realty logo, and used the conference room at Team Spirit Realty for meetings.

12. On July 25, 2009, Yoon asked for a refund of the \$10,000 advance fee because Respondent Murrin was not able to obtain a retail space lease for her at the Cerritos Mall.

13. Respondent Murrin was in serious financial trouble by the time Yoon requested a refund. His home had been foreclosed upon and his car had been repossessed. Murrin gave Yoon a promissory note for \$5,000 and two post-dated checks for \$2,500 each to repay the portion of the \$10,000 advance fee that he received. Yoon tried to cash the checks, but the checks were drawn from an account with insufficient funds.

14. Sang W. Kim gave Yoon a \$5,000 promissory note and a personal check for \$2,500 to reimburse her for the portion of \$10,000 advance fee that he received. His check was also drawn on an account with insufficient funds.

15. Yoon never received a refund of her \$10,000 advance fee.

Yoon Kim Transaction

16. On March 16, 2009, Yoon Kim (Kim), also a client referred from Sang W. Kim to Respondent Murrin, entered into a contract with Respondent Murrin to represent him in obtaining retail lease space for a McDonald's franchise in the Mission Viejo mall. Kim paid a \$10,000 refundable advance fee to Respondent Murrin. Sang W. Kim was paid \$5,000 as his compensation from the Kim transaction. In September of 2009, when Respondent Murrin was not able to secure a retail lease for Kim after six months of negotiations, Kim requested a refund of the \$10,000. Respondent Murrin offered to represent Kim in negotiations for retail space at a different location, but Kim declined the offer. Respondent Murrin refunded \$1,000 to Kim, but was not able to refund the remaining \$9,000 balance because he had spent the money and did not have enough funds to repay Kim.

17. Sohn was not aware of Sang W. Kim's transactions with Yoon and Kim. The records that Respondent Edmill maintains of Team Spirit Realty do not show any transactions by Sang W. Kim since his termination in 2007 when his real estate salesperson license expired. Respondent Sohn received a telephone call from Yoon on one occasion, but did not know any specifics about the transaction. Kim did not contact Respondent Sohn.

Costs of Investigation and Prosecution

18. Complainant submitted declarations and detail of investigation and prosecution costs. According to the declaration of Lissette Garcia, 15.25 hours of attorney time was expended at the rate of \$89 per hour for a total of \$1,357.25 in attorney's fees in this matter. Complainant also submitted a declaration and supporting detail of investigative costs of \$1,835.10 for investigation. Costs in the amount of \$1835.10 to investigate the case and \$1,357.25 in attorney fees to prosecute the accusation are reasonable under the provisions of Code section 10106. Accordingly, Complainant incurred \$3,192.35 in reasonable costs and fees.

LEGAL CONCLUSIONS

1. Business and Professions Code (Code) section 10159.2, subdivision (a) provides that the officer designated by a corporate broker licensee 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 real estate law, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

2. Code section 10026 provides that an advance fee is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license.

3. Code section 10130 provides that it is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson without having a license.

4. Code section 10131, subdivision (b) provides that a real estate broker is a person who for compensation, or in expectation of compensation, regardless of the form or time of payment, does or negotiates to lease or rent or offer to lease or rent, or places for rent, or solicits listings of places for rent, or solicits prospective tenants, or negotiates the sale, purchase or exchanges of leases of real property, or a business opportunity.

5. Code section 10131.2 provides that a real estate broker is also a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property.

6. Code section 10137 provides that it is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts which require a real estate salesperson or real estate broker's license and that it is unlawful for any real estate broker to compensate a real estate licensee except through the broker by whom he is employed.

7. Code section 10176, subdivision (b) provides that making any false promises of a character likely to influence, persuade, or induce by a licensee is grounds for discipline.

8. Code section 10176, subdivision (i) provides that fraud or dishonest dealings by a licensee is cause for discipline.

9. Code section 10177, subdivision (d), provides that willful disregard or violation of the real estate law or the rules and regulations of the commissioner is cause for discipline.

10. Code section 10177, subdivision (g), provides that demonstrated negligence or incompetence in performing an act which requires a real estate license is cause for discipline.

11. Code section 10177, subdivision (h) provides that when a broker licensee fails to exercise reasonable supervision over the activities of his or her salesperson, or, as the officer designated by a corporate broker licensee, fails to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required, it is cause for discipline.

12. Code section 10177, subdivision (j) provides that fraud and dishonest dealings are grounds for discipline.

13. California Code of Regulations, title 10, section 2970 provides that any person that proposes to collect an advance fee shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for an advance fee including the form of advance fee agreement proposed for use.

Respondent Murrin

14. Cause exists to discipline Respondent Murrin's real estate salesperson license pursuant to Code section 10130 in conjunction with Code section 10177, subdivision (d), and Code section 10139, by reason of Factual Findings 2 through 16, inclusive, and Legal Conclusions 2 through 6, inclusive, and 9, in that Respondent Murrin was not licensed as a real estate broker and operated under the name of RLS, an unlicensed real estate company, as a principal to conduct leasing transactions and to accept advance fees without prior DRE approval.

15. Cause exists to discipline Respondent Murrin's real estate salesperson license pursuant to Code sections 10176, subdivisions (b) and (i), and 10177, subdivision (j), by reason of Factual Findings 1 through 16, inclusive, and Legal Conclusions 2, 5, 7, 8, 12, and 13, in that Respondent Murrin represented to Yoon and Kim that the advance fees paid by each of them were refundable and the advanced fees were not refunded. Respondent provided Yoon with a promissory note and post-dated checks that were drawn on accounts with insufficient funds. Respondent refunded only a portion of Kim's advance fee.

Respondent Sohn

16. Cause exists to discipline Respondent Sohn's real estate broker license pursuant to Code sections 10159.2, subdivision (a), and 10177, subdivisions (d), (g) and (h). As the designated corporate broker, Respondent Sohn was responsible for the supervision of Sang W. Kim and the control of the real estate activities of Team Spirit Realty through Respondent Edmill. Respondent Sohn failed to exercise

reasonable supervision over Sang W. Kim by allowing him to engage in unlicensed activity in the name of Team Spirit Realty, to advertise under the Team Spirit Realty logo, and to use the Team Spirit Realty office and business cards while not licensed as a real estate salesperson or real estate broker. (Factual Findings 2 through 17, inclusive, and Legal Conclusions 1 through 13.)

Respondent Edmill

17. Cause exists to discipline Respondent Edmill's corporate real estate license pursuant to Code section 10177, subdivisions (g) and (i), by reason of Factual Findings 2 through 17, inclusive, and Legal Conclusions 1 through 13, inclusive, in that Sang W. Kim engaged in dishonest dealings and unlicensed activity when acting on behalf of Respondent Edmill through Team Spirit Realty. Additionally, Respondent Edmill's designated broker of record, Respondent Sohn, was negligent in his handling of Edmill's real estate activities by failing to reasonably supervise Sang W. Kim's activities on behalf of Respondent Edmill.

Disposition

18. Respondent Murrin was already operating outside the real estate law by operating RLS without a real estate broker's license when he met Sang W. Kim. Although he had reason to believe that Sang W. Kim was a licensed real estate salesperson, he had no reason to believe that he could take substantial advance fees from clients without the DRE's prior approval. Respondent Murrin knew that the failure to return the advance fees labeled "fully refundable" was contrary to his legal obligations. To his credit, Respondent Murrin accepted responsibility for repayment of the funds. He made a partial refund to Kim, but was unable to gather enough funds to make any refund to Yoon. Murrin's pattern of violations of the real estate law and financial harm to Yoon and Kim are significant.

19. Respondent Sohn, as an experienced real estate broker and designated corporate officer, failed to reasonably supervise Sang W. Kim to prevent his unlicensed and dishonest activity on behalf of Respondent Edmill. Sang W. Kim misrepresented the status of his license and the nature of his activities to Respondent Sohn and Respondent Edmill, both of whom gained no financial benefit from such activities. But for this involvement with Sang W. Kim, Respondent Edmill and Respondent Sohn have no prior history of license discipline.

20. The purpose of a disciplinary matter is to protect the public and not to punish the licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Here, the public will be protected by suspending the licenses of Respondent Sohn and Respondent Edmill for 10 days, ordering the payment of restitution to Joon Yoon and Yoon Kim, and requiring Respondent Sohn to take and

pass the DRE professional responsibility examination. Respondent Murrin's conduct is so egregious that the public can only be protected by revocation of his real estate salesperson license.

Costs

21. Complainant has established that the reasonable costs of \$3,192 have been incurred in this matter under the provisions of Business and Professions Code section 10106 by reason of Finding 18. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 10106. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, full costs must not be assessed where it would unfairly penalize a 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. A Respondent's subjective good faith belief in the merits of his or her position and whether that Respondent has raised a colorable challenge must be considered. A Respondent's ability to pay must also be considered. (*Zuckerman, supra*, at 45.) Here, Respondent Murrin is employed out of state and Respondents Sohn and Edmill continue to operate as real estate licensees. None of the respondents obtained a dismissal of charges. However, Respondents Edmill and Sohn were able to obtain a reduction in the discipline imposed upon them through the hearing process. After consideration of all the above factors, an order awarding costs against all respondents jointly and severally is appropriate.

ORDER

1. All licenses and licensing rights of Respondent Edmill Enterprises Inc. under the Real Estate Law are suspended for a period of ten (10) days commencing on the effective date of this Decision; provided, however, that if Respondent Edmill Enterprises Inc. petitions, said suspension (or a portion thereof) shall be stayed upon condition that:

(1) Respondent Edmill Enterprises, Inc. pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$250 for each day of the suspension for a total monetary penalty of \$2,500.

(2) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

Not Adopted

(3) No further cause for disciplinary action against the real estate license of Respondent Edmill Enterprises, Inc. occurs within one year from the effective date of the Decision in this matter.

(4) Should Respondent Edmill Enterprises, Inc. fail to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension, and in which event Respondent Edmill Enterprises, Inc. shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

(5) Should Respondent Edmill Enterprises, Inc. pay the monetary penalty and no further cause for disciplinary action against the real estate license of Respondent Edmill Enterprises, Inc. occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

2. All licenses and licensing rights of Respondent Edward U. Sohn under the Real Estate Law are suspended for a period of ten (10) days commencing the effective date of this Decision; provided, however, that should Respondent Edward U. Sohn successfully petition, said suspension (or a portion thereof) shall be stayed upon condition that:

(1) Respondent Edward U. Sohn pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$100 for each day of the suspension for a total monetary penalty of \$ 1,000.

(2) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

(3) No further cause for disciplinary action against the real estate license of Respondent Edward U. Sohn occurs within one year from the effective date of the Decision in this matter.

(4) Should Respondent Edward U. Sohn fail to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension, and in which event Respondent Edward Sohn shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

(5) Respondent Edward U. Sohn 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

Not Accepted

Not Admitted

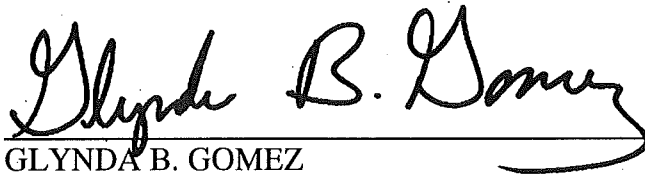
appropriate examination fee. Should Respondent Edward U. Sohn fails to satisfy this condition, the Commissioner may order suspension of Respondent Edward U. Sohn's license until he passes the examination.

3. All licenses and licensing rights of Respondent Thomas H. Murrin under the Real Estate Law are revoked.

4. Respondents Edmill Enterprises, Inc., Edward U. Sohn, and Thomas H. Murrin shall submit proof satisfactory to the Commissioner of payment of investigative and prosecution costs in the amount of \$3,192.35 within six months of the effective date of this decision.

5. Respondents Edmill Enterprises, Inc., Edward U. Sohn and Thomas H. Murrin shall submit proof satisfactory to the Commissioner of payment of restitution in the amount of \$9,000 to Yoon Kim and \$10,000 to June Yoon within six months of the effective date of this decision.

Dated: March 27, 2013



GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings