

May-3-2018

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BUREAU OF REAL ESTATE

BEFORE THE BUREAU OF REAL ESTATE *Sigurd Danner*

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation against
LARA SINITSIN,
Respondent.

CalBRE No. H-40659 LA
OAH No. 2017070417

In the Matter of the Order to Desist and Refrain
against
LARA SINITSIN, doing business as DEL
SOL PROPERTY MANAGEMENT, INC.
Respondents.

CalBRE No. H-40677 LA
OAH No. 2017071082

ORDER DENYING RECONSIDERATION

On, 03/29/2018 a Decision was rendered in the above-entitled matter. The Decision becomes effective on April 30, 2018.

On April 26, 2018, Respondent petitioned for reconsideration of the Decision of 03/29/2018.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of 03/29/2018, and reconsideration is hereby denied.

IT IS SO ORDERED May 3, 2018

WAYNE S. BELL
REAL ESTATE COMMISSIONER

Daniel J. Sandri
DANIEL J. SANDRI
Chief Deputy Commissioner

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APR 27 2018

BUREAU OF REAL ESTATE

By 

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

<p>In the Matter of the Accusation Against:</p> <p>LARA SINITSIN,</p> <p>Respondent.</p>	<p>CalBRE NO. H-40659 LA</p> <p>OAH NO. 2017070417</p>
<p>In the Matter of the Order to Desist and Refrain against:</p> <p>LARA SINITSIN, doing business as DEL SOL PROPERTY MANAGEMENT, INC.,</p> <p>Respondent.</p>	<p>CalBRE NO. H-40677 LA</p> <p>OAH NO. 2017071082</p>

ORDER STAYING EFFECTIVE DATE

On March 29, 2018, a Decision was rendered in the above-entitled matter to become effective April 30, 2018.

IT IS HEREBY ORDERED that the effective date of April 30, 2018, is stayed for a period of 10 days to consider Respondent's petition for reconsideration.

The Decision of March 29, 2018, shall become effective at 12 o'clock noon on May 10, 2018.

DATED: April 27, 2018

WAYNE S. BELL
REAL ESTATE COMMISSIONER

By: 
DANIEL J. SANDRI
Chief Deputy Commissioner

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

FILED

APR 11 2018

BUREAU OF REAL ESTATE

By *Angela Ranson*

In the Matter of the Order to Desist and
Refrain of:

) CalBRE No. H-40677 LA

) OAH No. 2017071082

) LARA SINITSIN, doing business as
) DEL SOL PROPERTY
) MANAGEMENT, INC.,

) Respondent.

DECISION

The Proposed Decision dated January 31, 2018, 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.

- Legal Conclusions, Page 11, Paragraph No. 21, Line 5, "Board" is amended to read "Bureau."
- Legal Conclusions, Page 12, Paragraph No. 22, Line 5, "Board" is amended to read "Bureau."
- Order, Page 12, Paragraph No. 4, Line 1, "Board" is amended to read "Bureau."

The Desist and Refrain Order against Respondent Lara Sinitsin is affirmed.

Pursuant to Government Code Section 11521, the Bureau 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 Bureau'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 _____

APR 30 2018

IT IS SO ORDERED March 29, 2018.

WAYNE S. BELL
REAL ESTATE COMMISSIONER


By: DANIEL J. SANDRI
Chief Deputy Commissioner

**BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

LARA SINITSIN,

Respondent.

Case No. H-40659 LA

OAH No. 2017070417

**In the Matter of the Order to Desist and
Refrain Against:**

**LARA SINITSIN, doing business as DEL
SOL PROPERTY MANAGEMENT, INC.,**

Respondent.

Case No. H-40677 LA

OAH No. 2017071082

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard these consolidated matters on January 8, 2018, in Los Angeles, California.

Lisete Garcia, Counsel with the Bureau of Real Estate, Department of Consumer Affairs (Bureau), appeared and represented complainant Maria Suarez, a Supervising Special Investigator for the Bureau.

Ilya Alekseyeff, Attorney at Law, appeared and represented respondent Lara Sinitsin.

The parties submitted the matter, stipulating to a single decision for the consolidated cases, and the record was closed on January 8, 2018.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense.
2. On January 11, 2003, the Bureau issued to respondent salesperson license number S/01365127. Respondent's license is valid and is scheduled to expire on January 10,

2019. At all times mentioned herein, respondent's employing broker was Empire Estates Group, Inc. (Broker).

3. On October 13, 2006, respondent filed Articles of Incorporation with the California Secretary of State, to form a corporation named Del Sol Property Management, Inc. (Del Sol). Respondent is the sole shareholder, officer, and director of Del Sol. Pursuant to the Statement of Information on file with the California Secretary of State, Del Sol's type of business is "property management." (Ex. 5.)

4. Del Sol filed a Business Tax Application with the City of Los Angeles, reporting that it does business as Monarca Enterprises, and describing the business as "property management company." (Ex. 6, p. 4.)

5. The Bureau has issued no real estate license to Del Sol. Monarca Enterprises has no real estate license or any of the types of licenses issued by the Contractors' State License Board.

6. To promote her business, respondent created a profile at LinkedIn.com, in which she represents that Del Sol is "proud to offer the most complete professional services available today. Our main goal is to protect your investment and maximize the potential of the property. . . . We are proud to say that we would manage your property as we would one of our own. We would like to take away the burden of managing your own property, but not take away your control." (Ex. 7.)

7. Respondent has a website at www.delsolproperties.com to promote Del Sol's business activities. The website describes Del Sol as "a full-service property management company specializing in condominiums, townhomes, single-family homes and investment properties." (Ex. 7, p. 7.) The website repeats the representations made in respondent's LinkedIn profile, to wit: "We are proud to say that we would manage your property as we would one of our own. We would like to take away the burden of managing your own property, but not take away your control." (Ex. 7, p. 8.)

8. The website also describes financial management services provided by Del Sol to homeowners associations, including "monthly billing of the dues, paying the vendors, preparing the annual budget, assisting in preparation of the reserve study, association's tax returns annual financial review" as well as "attending board meetings, performing a host of administrative activities required for the day-to-day operation of your Association, handling complaints, correspondence and rule enforcement." (Ex. 7, pp. 9-10.) A real estate license is not required to provide the financial management services to homeowners associations as described in this paragraph.

9. The website further represents, "We know how good our service is but don't just take our word for it, read what some of our satisfied customers have to say." (Ex. 7, p. 12.) The website then sets forth seven testimonials from purported customers describing their satisfaction with Del Sol's services. In her testimony, respondent admitted that none of

the testimonials was truthful or written by actual former clients, that her brother had created the website, and that she did not know where he "came up with the testimonials."

10. On May 27, 2016, the Bureau received a Licensing/Subdivider Complaint filed by a consumer (VP) in connection with respondent's real estate activities. VP provided the following written statement in support of the complaint:

Called [respondent] to find tenant for our property while we were out of the country. She finds a tenant that is very picky and ends up orchestrating a scheme to hire unlicensed contractors to perform work on our home. The job was terrible and we were not only overpriced but the complete job had to be redone 3 months later. Asked for copies of lease listing agreement but respondent did not provide for months. Finally got a copy of it and it is missing all signatures including ours. She charged us 6% commission on the trasaction [sic] but the contract states 5%. She is refusing to refund the 1%. [Respondent] states that its [sic] a typo on the contract that does not even have our signatures and makes it seem like its [sic] our fault.

(Ex. 8, p. 3.)

Transaction History

11. In 2013, VP and her husband owned a single-family residence in Encino, California (Encino Property), which was their primary residence before they moved abroad. To rent the Encino Property during their absence, they retained respondent, who found a tenant and negotiated a two-year lease term. Respondent disclosed the listing and lease to the Broker and executed the agreements under the supervision of the Broker. After occupying the Encino Property, the tenant vacated the premises upon the expiration of the lease in September 2015.

12. On August 15, 2015, VP sent respondent an email, asking "Can you put the house for rent on the market again? What rent would you suggest?" (Ex. 12, p. 10.)

13. On or about August 23, 2015, respondent prepared a Lease Listing Agreement, whereby VP granted to respondent and the Broker the exclusive authorization to lease or rent the Encino Property. The lease listing agreement provided that VP would pay respondent a commission of 5% of the total rent. Respondent sent the lease listing agreement to VP for signature, but VP never signed or returned the agreement. The Broker was designated the listing firm on the listing agreement, but respondent did not disclose the transaction to the Broker.

14. On the same date, respondent advertised the Encino Property in the region's multiple listing service (MLS) under her licensed name and the Broker's name, and without

reference to Del Sol or Monarca Enterprises. The listing offered the Encino Property at the rate of \$4,600 per month for the main house only, or \$5,500 per month for both the main house and the guest house on the property.

15. On November 3, 2015, respondent sent VP an email describing a potential tenant (JW), who wrote: "My name is [JW] and I'm a single woman who is educated, clean-cut and non-smoker. I have no kids and no pets! I have excellent credit. ... I love your home and would be honored to rent it and take care of it for you. I will be living alone in the house will also be renting the guesthouse for my personal assistant to be over from time to time." (Ex. 12, p. 37.) JW made one request for a pre-tenancy repair as follows: "Also could the outside of the house be painted as well as the inside walls as well? I'm willing to hire professional painters and paint with name brand paint for the inside of the house and I'm requesting you to be willing to pay to paint the outside of the house a more neutral color." (Ex. 12, p. 37.)

16. On November 4, 2015, respondent prepared a Residential Lease or Month-To-Month Rental Agreement (Rental Agreement) between VP and JW, whereby JW would rent the Encino Property and the guest house, both unfurnished, at the rate of \$5,500 per month from November 6, 2015, through October 31, 2017. The Broker was designated the listing firm on the lease, but respondent executed the lease of the Encino property without disclosure to the Broker.

17. At the time, respondent was overseeing certain repairs and improvements to the Encino Property. Respondent incurred the following expenses, which were substantiated by receipts and invoices presented at the hearing:

- (A) On November 4, 2015, respondent paid \$145.39 for lighting equipment.
- (B) On November 5, 2015, respondent incurred \$71.59 for a carbon monoxide detector.
- (C) November 6, 2015, respondent paid \$2,266.45 for a wall oven, and a five-year warranty.
- (D) On November 6, 2015, respondent paid \$94.22 for U-Haul equipment used to move VP's furniture to storage.
- (E) On November 6, 2015, respondent paid \$64.40 for a storage unit.
- (F) On November 7, 2015, respondent paid \$205.76 for additional lighting and \$39.52 for painting materials.
- (G) November 21, 2015, respondent paid \$459.20 for bathroom fixtures, including the vanity and painting materials.

18. In addition, respondent prepared two Monarca Enterprises invoices for services rendered in connection with the Encino Property. The Monarca Enterprises invoices are summarized as follows:

(A) On November 7, 2015, respondent presented to VP a Monarca Enterprises invoice, reflecting total charges of \$5,940.94, for services rendered in connection with the Encino Property. The invoice was for truck driving, loading, unloading, removing appliances, installing appliances, removing lighting, removing an old lock installing the new law, patchwork the appliances, flooring materials, installing new padding, flooring, base molding, painting mold, with an extra charge for "water damaged floors using machine." Pursuant to the invoice, and as highlighted by respondent's handwritten instruction, VP was instructed to make her check payable to Monarca Enterprises.

(B) On November 25, 2015, respondent presented to VP another Monarca Enterprises invoice, reflecting total charges of \$2,450, for services rendered in connection with the Encino Property. The invoice was for demolishing the master bathroom, removing mirrors and cabinets, removing mold-damaged drywall, treating cabinets, installing new drywall, installing a new vanity, installing new drywall, installing a mirror, dumping, painting, and plumbing.

19. Respondent testified that she made no profit when VP paid the Monarca invoices, but provided no evidence to corroborate her testimony. No evidence was presented to show that respondent disclosed to VP that she owned and controlled Monarca Enterprises. The evidence established that Del Sol was doing business under the fictitious name of Monarca Enterprises, and that Del Sol was formed as a for-profit enterprise to "engage in any lawful act or activity for which the corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code." (Ex. 5.) Accordingly, respondent's testimony that she made no profit from these invoices is given little credit, and the finding is made that she made some profit after paying subcontractors to perform services.

20. On November 11, 2015, JW wrote the following email to VP:

[F]irst I would like to say thank you very much for allowing me to rent your home. My list term started on Friday, November 6, 2015 but I was unable to inhabit the house at all because the floors were being done and broken appliances were being replaced. I was not able to even have my truck unloaded until Monday, November the 9th. Monday, November 9 it was discovered during the day that there was a gas leak coming from the guesthouse so that was an issue that Had to be handled and did not have hot water and other things that were uninhabitable for that day as well also required me to have the gas turned off in the main house. . . . It is now November 11, 2015 and I have

only been living here since Monday but not comfortably and I have discovered that the cabinets in the master bedroom bathroom have a very strong odor coming from them very powerful odor that you can smell in the whole entire bedroom. It appears that there some kind of a mold issue and now I'm concerned about this house being safe and want it to be inspected to make sure there is no toxic mold or mildew in this house. (Sic.)

(Ex. 12, pp. 63-64.)

21. On November 12, 2015, respondent sent VP an email to request payment of her commission and expenses incurred in connection with the rental of the Encino Property. Respondent calculated her commission at the rate of six percent, for a total of \$7,920, and instructed VP to make her commission check payable to Del Sol. She instructed VP to send a check payable to respondent individually, to reimburse her in the amount of \$3,412.61 in connection with other related expenses. She further instructed respondent to make a check payable to Monarca Enterprises in the amount of \$5,940.94 for services relating to the installation of flooring and appliances.

22. There is no evidence to show that respondent disclosed to VP that Del Sol was doing business at the time in the name Monarca Enterprises. (Factual Finding 4.) In her testimony, respondent explained that she never revealed her interest in Monarca Enterprises to VP "because she never asked."

23. On November 13, 2015, VP paid \$7,920 to Del Sol as instructed by respondent, representing a commission based on six percent of the total rent payable under the Rental Agreement. The commission was not processed through the Broker.

24. On November 14, 2015, VP responded to JW's request for proration of her rent in November 2015. VP wrote: "I'm sure you appreciate the fact that all the requests you made upon your arrival have been fully fulfilled." (Ex. 9, p. 16.) JW replied the next day as follows:

I did not ask for any light fixtures to be changed. I did not ask for the floor to be changed I did not ask for the dishwasher to be changed the only thing that I suggested should be changed was the oven because they were big wires hanging all in it and it looked like it was broken I did not change the electricity to my name because I didn't even get to move in until the day the lights were changed and I really don't appreciate you making it sound like it's my fault that all these things were done were respondent's idea not mine. I did not ask her to do any of those things. (Sic.)

(Ex. 9, p. 16.)

25. Over the following six weeks, JW, VP, and respondent corresponded by email regarding continuing problems with the Encino Property. In one email exchange, VP offered JW the opportunity to cancel the lease and refund her deposit. On December 31, 2015, JW notified respondent and VP that she had vacated the Encino Property.

26. On May 8, 2016, VP discovered that the unsigned contract provided that commissions would be limited to five percent. VP demanded that respondent refund the amount of \$1,320, one percent of the total rents payable under the contract.

27. In response, respondent wrote: "The standard fees for the service are 6% it was a typo. I never overcharged you." (Ex. 9, p. 23.) To date, respondent has not reimbursed VP any portion of the commission paid.

Evidence in Mitigation

28. There is no evidence of an agreement between VP and respondent or Del Sol to provide property management services in connection with the Encino Property. The evidence established that VP intended to manage the Encino Property and that she paid no compensation to respondent for property management services, as was corroborated by JW's email dated November 11, 2015:

... One reason I decided to rent your home is because I felt reassured that even though it's an older house and has some issues that, there was going to be a property manager locally here since you're so far away now I'm being told that there will be no property manager locally and it's going to be handled by you long-distance and that is very unsettling to me especially with all the things that have gone wrong already and I'm not even really hardly moved into this house and [respondent] is still trying to help me with this house even though she's made it clear to me she's not getting paid and that she is not the property manager and that you're saying that you're going to be the property manager. (*Sic.*)

(Ex. 12, p. 64.)

29. Respondent also presented MLS listings for all leases that she has completed, each of which name the Broker and none of which make reference to Del Sol or Monarca Enterprises. Respondent testified that the Broker had access to her MLS listings and was able to monitor her activities, and that the Broker never paid commissions directly to respondent. However, complainant presented clear and convincing evidence that the Broker had file documentation procedures that respondent had not followed and that the Broker had previously paid commissions to respondent. Without evidence to corroborate her contentions, respondent's testimony lacks credibility and is insufficient to rebut complainant's evidence.

30. Respondent testified that she only offered property management services to homeowners associations, and presented a property management agreement between Del Sol and Park Panett Homeowners Association.

31. Respondent also testified that she did not believe she did anything wrong in relation to her transaction with VP in 2015, except that she "probably should not have helped." She had instructed other clients to make commission checks payable to Del Sol based on the advice of her accountant, but she has discontinued the practice.

Costs

32. Complainant incurred costs in the amount \$1,744 in its investigation of the violation and \$3,702.40 in its prosecution of this disciplinary action, a total of \$5,446.40 in reasonable costs.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. The Bureau may discipline the license of a real estate licensee who willfully disregarded or violated the law or any related rules or regulations. (Bus. & Prof. Code, § 10177, subd. (d).)

Unlicensed Activity

3. 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 first obtaining a real estate license from the Bureau. (Bus. & Prof. Code, § 10130, subd. (a).)

4. A real estate salesperson is "a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts [prescribed by the Real Estate Law]." (Bus. & Prof. Code, § 10132.) The Real Estate Law authorizes a licensed real estate salesperson to lease, rent, and manage real property while under the employment of a broker. (Bus. & Prof. Code, § 10131, subd. (b).)

5. A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name. (Cal. Code Regs., tit. 10, § 2731, subd. (a).)

6. In this case, respondent was authorized to lease the Encino Property, but only under the employment of the Broker. Respondent entered into a listing agreement with VP, negotiated the Rental Agreement with JW, and was paid commissions, all without disclosure to the Broker. Although the MLS listing and the contracts identified the Broker,

respondent's conduct exhibits a pattern of acting independently of the Broker and avoiding the master-servant nature of the employment relationship. The Broker's access to the MLS does not fulfill respondent's duty to perform the real estate activities provided to VP under the employ of a broker. Accordingly, respondent violated the Real Estate Law.

7. Moreover, clear and convincing evidence shows that respondent was soliciting real estate business in the name of Del Sol, a non-natural person and not an employee of the Broker, without a real estate license bearing Del Sol's name. Although the evidence establishes that respondent performed property management for homeowners' associations that would not require a license, she violated Business and Professions Code 10130, subdivision (a), by "advertising" general property management services to the public on the Del Sol website and in her LinkedIn profile.

8. Although there was no evidence of a property management agreement between VP and respondent, respondent assumed to act as a property manager, making all arrangements to hire and retain service providers to make repairs and alterations to the Encino Property. Although VP paid no direct compensation to respondent for property management services, respondent benefited by the amounts paid to her wholly-controlled businesses, Del Sol doing business as Monarca Enterprises.

9. Cause exists to revoke respondent's license under Business and Professions Code sections 10131, subdivision (b), 10177, subdivision (d), and 10132 because she engaged in the unlicensed practice of real estate.

Undisclosed Profits and Dishonest Dealing

10. The Bureau may discipline the license of a real estate licensee who has engaged in any conduct that constitutes fraud or dishonest dealing, or made a substantial misrepresentation. (Bus. & Prof. Code, § 10177, subd. (j).)

11. Business and Professions Code section 10176, subdivision (g), provides in pertinent part, as follows:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

[¶] . . . [¶]

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission, or profit or

the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission, or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.

12. Respondent argues that the amounts paid to Monarca Enterprises did not constitute secret profits, citing the case of *Rylander v. Karpe* (1976) 60 Cal.App.3d 317. In *Rylander*, a broker who was paid commissions by sellers under listing agreements with the broker was not required under Business and Professions Code section 10176, subdivision (g), to reveal to those sellers that he had, after the close of escrow, received fees from lenders as consideration for placing the loans with the lenders and for preparing loan application packages. The loan fee was not a profit under the listing agreements with the sellers; the loan fee was generated by, and obtained under separate subsequent agreements involving the lender and perhaps also the buyers, but not the sellers. Accordingly, such a profit does not require disclosure to the sellers under the statute. (*Id.* at p. 322.)

13. This case is significantly different from the *Rylander* case because respondent was not paid by a third-party as consideration for a benefit conferred under a separate subsequent agreement; rather, respondent received two payments from VP, one in the form of a six percent commission exceeding the five percent commission provided in the unsigned listing agreement, and then in relation to that engagement, a second for services rendered by Monarca Enterprises without disclosing to VP that respondent controlled Monarca Enterprises. As a result, respondent took additional compensation or profit from VP without fully disclosing the full amount that she was being paid coincident with the listing agreement.

14. Cause exists to revoke respondent's license under Business and Professions Code sections 10176, subdivision (g), and 10177, subdivisions (d) and (j), because respondent engaged in dishonest dealing and took profits without disclosure to her listing client.

Desist and Refrain Order

15. If the commissioner determines through an investigation that a person has engaged or is engaging in an activity which is a violation of the Real Estate Law, the commissioner may direct the person to desist and refrain from such activity by issuance of an order specifying the nature of the activity and the factual and legal basis for his or her determination. (Bus. & Prof. Code, § 10086, subd. (a).)

16. Cause exists to affirm the Desist and Refrain Order issued by the commissioner under Business and Professions Code sections 10086, subdivision (a), because respondent has engaged in activities in violation of the Real Estate Law.

Mitigation and Rehabilitation

17. Respondent presented insufficient evidence of mitigation or rehabilitation. (Cal. Code Regs., tit. 10, § 2912.) Arguably the most important consideration in predicting future conduct is evidence of a change in attitude from that which existed at the time of the conduct in question. (*Singh v. Davi* (2012) 211 Cal.App.4th 141.) In this case, respondent has presented no evidence that she has changed her attitude about her conduct. She exhibited no remorse or acknowledgement of wrongdoing, an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.) Rehabilitative efforts presuppose an admission of the problem, and respondent's failure to recognize the problem, and its potential effect on a professional practice, heighten the need for discipline. (*In re Kelley* (1990) 52 Cal.3d 487.)

18. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. (*Golde v. Fox* (1979) 98 Cal.App.3d 167.) Respondent engaged in dishonest dealing with the Broker by failing to follow its file documentation procedures and by failing to make disclosure of the 2015 Encino Property listing. Respondent engaged in dishonest dealing with VP by claiming a six percent commission without a signed agreement, exceeding the amount provided in the written agreement presented to VP, and by failing to disclose her controlling interest in Monarca Enterprises. Respondent's dishonest conduct was aggravated by services rendered by Monarca Enterprises without a contractor's license, and by the untruthful testimonials set forth on the Del Sol website advertising her real estate services.

19. Imposing discipline on the respondent's license furthers a particular social purpose: the protection of the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.) Under the circumstances, license revocation is required to prevent risk of harm to owners, buyers, and sellers of real estate.

Cost Recovery

20. A licensee's violation of the licensing act entitles the Bureau to recover all reasonable costs incurred to investigate and prosecute the violation. (Bus. & Prof. Code, § 10106.) Complainant has presented satisfactory proof that the Bureau incurred reasonable costs in the amount of \$5,446.40 to investigate and enforce the case against respondent.

21. However, an agency must not assess the full amount of costs incurred in its investigation and enforcement when to do so 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. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.) The Board must also consider respondent's

subjective good faith belief in the merits of her position, and whether respondent has raised a colorable challenge to the discipline or is unable to pay.

22. Respondent used the hearing process to raise a colorable claim in defense and her ability to pay will be substantially impacted by the revocation of her license. Ordering respondent to pay costs in addition to revoking her license will be unduly punitive. Accordingly, complainant's costs are allowed in the amount of \$5,446.40, but payment is deferred until such time as respondent successfully petitions the Board for reinstatement of her license.

ORDER

1. The Accusation and Desist and Refrain Order against respondent Lara Sinitsin are affirmed.

2. Real estate salesperson license number S/01365127 issued to respondent is revoked.

3. Respondent Lara Sinitsin, doing business as Del Sol Property Management, Inc., is ordered to desist and refrain from performing any acts within the State of California for which a real estate broker license is required, unless they are so licensed.

4. Respondent shall pay the amount of \$5,446.40, due and payable to the Board only as a condition precedent to reinstatement of respondent's license or the issuance of a license to respondent doing business as Del Sol Property Management, Inc.

DATED: January 31, 2018

DocuSigned by:

Matthew Goldsby

MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings