

FILED

DEC - 4 2019

BEFORE THE DEPARTMENT OF REAL ESTATE **DEPT. OF REAL ESTATE**

STATE OF CALIFORNIA

By 

In the Matter of the Accusation of:

) DRE No. H-41060 LA

VENTURA COUNTY REAL ESTATE INC.,
doing business as California Investments
Realty, and **NOE VILLANUEVA**, individually
and as designated officer of Ventura County
Real Estae Inc.

) OAH No. 2019070639

Respondents

DECISION

The Proposed Decision dated October 24, 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 license is granted to Respondent(s).

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 December 24, 2019.

IT IS SO ORDERED November 22, 2019

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER



Daniel J. Sandri

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

In the Matter of the Accusation Against:

**VENTURA COUNTY OF REAL ESTATE, INC., doing business as
CALIFORNIA INVESTMENTS REALTY, and**

**NOE VILLANUEVA, individually and as designated officer of
Ventura County Real Estate, Inc.,**

Respondents

Agency Case No. H-41060 LA

OAH No. 2019070639

PROPOSED DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on September 24, 2019, in Los Angeles, California.

Steve Chu, Staff Attorney for the Department of Real Estate (Department), represented Maria Suarez (Complainant), Supervising Special Investigator of the State of California. Noe Villanueva (Respondent Villanueva) appeared and represented himself and, as designated officer, represented Ventura County Real Estate, Inc., doing

business as California Investments Realty (Respondent Ventura), (collectively, Respondents).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 24, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 30, 2018, Complainant filed Accusation No. H-41060 LA in her official capacity.
2. On January 5, 2010, the Department issued broker's license number 01516818 to Respondent Villanueva, which is due to expire on January 4, 2022, unless renewed.
3. On February 4, 2010, the Department licensed Respondent Ventura as a corporate real estate broker by and through Respondent Villanueva, as designated officer and broker responsible for supervising the activities requiring a real estate license conducted on behalf of Respondent Ventura or its officers, agents, and employees. The corporation license is due to expire on February 3, 2022, unless renewed.

Corporate Non-Compliance

4. On May 2, 2016, the Franchise Tax Board (FTB) suspended Respondent Ventura's power, rights, and privileges for its failure to pay taxes due for the periods ending December 31, 2013 and December 31, 2015. As a result, the Secretary of State placed Respondent Ventura on suspended status. Respondent Ventura remained suspended until September 18, 2019, when the FTB issued a Certificate of Revivor after Respondent Ventura paid the outstanding balance due.

Respondent's Testimony and Contentions

5. During the three years and four months in which Respondent Ventura remained on suspended status with the Secretary of State, Respondent Ventura provided property management services for approximately 25 properties, and listed approximately 13 properties.

6. When Respondent Villanueva became aware that Respondent Ventura had been suspended and was not in good standing with the Secretary of State, he did not understand that Respondent Ventura could not engage in licensed activities, because when he looked at the Department's website, it showed that the corporation was active. He now acknowledges that Respondent Ventura's property management and listing services during the period of suspension constituted a violation of real estate law.

7. Respondent Villanueva testified that he did not become aware that the Secretary of State had placed Respondent Ventura on suspended status until he

received service of the Accusation in this matter on May 30, 2018. Immediately thereafter, Respondent Villanueva transferred all real estate agents under Respondent Ventura onto his broker's license, and then commenced discussions with the FTB. Respondent Villanueva encountered difficulty with the FTB in determining whether Respondent Ventura should file tax returns as a "C-corp." or as a "S-corp.", which was an issue that needed to be addressed before the FTB would accept any tax return filings to bring Respondent Ventura current. Respondent Villanueva subsequently secured documentation demonstrating that Respondent Ventura was an "S-corp." as of 2013, which resulted in the FTB requiring that Respondent Ventura amend its 2010, 2011, and 2012 tax returns to show that it was a "C-corp.", as Respondent Villanueva was unable to secure documentation showing that it was a "S-corp." prior to 2013. It took more than a year to sort out the corporate classification issue, contributing to the delay in bringing Respondent Ventura current with the FTB, which finally occurred on September 18, 2019.

8. During the 14 years in which he has held a license, Respondent Villanueva has never been cited or disciplined by the Department, and neither has Respondent Ventura.

9. Respondent Villanueva contends that the scope of the Real Estate Law is to protect the public "and to get people who show malice or moral turpitude to the public." He asserts that nothing in the Accusation shows that Respondents endangered the general public, and therefore, revocation or suspension would not serve as a just punishment for committing a violation.

10. Respondent Villanueva contends that the failure to supervise charge set forth in the Accusation was addressed by him taking steps to put Respondent Ventura back in good standing.

11. Respondent Villanueva contends that when he obtained the Certificate of Revivor for Respondent Ventura, the corporation was revived retroactively to the date it was suspended, and therefore, any actions that occurred while Respondent Ventura was not in good standing, were cured. Respondent Villanueva based his contention on several excerpts found in the Pacific Law Journal and in the University of Richmond Law Review. The excerpts discussed California revivor law and reinstatement of a corporation after administrative dissolution, and stated, in pertinent part, following:

- a. "The revival of a suspended corporation normally retroactively validates its actions as to 'matters' both prior to and subsequent to judgment in the litigation context Acts which a court considers to be 'procedural' as opposed to 'substantive' should be validated retroactively in both the litigation and non-litigation contexts." (Pacific Law Journal, p. 41.)
- b. "The apparent trend in California, as expressed by its highest court, however, as well as the manifested trend in the relevant statutes and case law of other important states and states with similar statutes, is to hold that revivor works a broad retroactive validation of all interim acts (except contracts, which are often subject to special rules) once a delinquent corporation has paid its overdue taxes with all penalties and interest." (*Id.* at p. 81.)
- c. "The certificate of reinstatement states an effective date. When the reinstatement takes effect it relates back to the date of the dissolution

and the corporation resumes carrying on its business as if the dissolution never occurred." (University of Richmond Law Review, p. 42.)

12. Respondent Villanueva further contends that any discipline from the Department would constitute an additional penalty which is disfavored by the law. Respondent Villanueva bases this contention on the following excerpt:

"The purpose of the tax suspension statutes is to pressure corporations to pay their taxes, and that purpose is not served by imposing additional penalties after taxes have been paid with penalties and interest."

(Pacific Law Journal, p. 42.)

13. Respondent Villanueva did not proffer the entire articles from where he retrieved the excerpts set forth in Factual Findings 11 and 12; rather, he presented one or two-page photocopies of excerpts from page numbers in the 40s and 80s. It is therefore unclear the specific context to which the excerpts pertain, other than the limited information gleaned from the title of the article from the Pacific Law Journal, to wit, *An Examination of California Revivor Law*, and from the title of the subsection of the article from the University of Richmond Law Review, to wit, *Reinstatement After Administrative Dissolution*. It is also clear that none of the excerpts referenced Real Estate Law or disciplinary matters within the purview of the Department, or otherwise indicated that such excerpts were in any way controlling over the Department's matters. As such, Respondent Villanueva's excerpts are afforded little weight in the instant proceeding.

14. Respondent Villanueva seeks leniency on behalf of himself and Respondent Ventura, as he contends there is no evidence of malice, danger to the

general public; no moral turpitude, and that the defects have been resolved retroactively.

Costs of Prosecution

15. The Board incurred costs of investigation in the amount of \$593.50, and costs of enforcement in the amount of \$912.25, for a total of \$1,505.75 in prosecution costs. These costs are reasonable pursuant to Business and Professions Code section 10106.

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. Business and Professions Code section 10177 provides that 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 has done, in pertinent part, the following:

¶ . . . ¶

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) 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.

¶ . . . ¶

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license

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

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

3. Business and Professions Code section 10159.2 provides that the officer designated by a corporate broker licensee pursuant to Section 10211 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 provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

4. California Code of Regulations, title 10, section 2742, provides that a licensed corporation shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State.

5. Business and Professions Code section 10106 provides that in any order issued in resolution of a disciplinary proceeding before the Department, the

commissioner may request the administrative law judge to direct a licensee found to have committed a violation of real estate law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6. Cause exists to discipline the corporate broker's license of Respondent Ventura, pursuant to Business and Professions Code sections 10177, subdivisions (d), (f), and (g), in that Respondent Ventura violated the Real Estate Law, conducted itself in a manner that would have warranted the denial of its application for a real estate license, and demonstrated negligence or incompetence in performing an act for which it is required to hold a license, by engaging in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State, in violation of California Code of Regulations, title 10, section 2742, as set forth in Factual Findings 1 through 7.

7. Cause exists to discipline the broker's license of Respondent Villanueva, pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), and (h), in that Respondent Villanueva violated the Real Estate Law, demonstrated negligence or incompetence in performing an act for which he is required to hold a license, and failed to exercise reasonable supervision and control of the activities of Respondent Ventura when it engaged in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State, as set forth in Factual Findings 1 through 7.

8. While Respondents have a discipline-free history, the violations they committed were serious. Respondent Villanueva was responsible for monitoring Respondent Ventura's activities to ensure compliance with the Real Estate Law and regulations. He failed in this regard. At the administrative hearing, Respondent

Villanueva acknowledged his responsibility and his failed oversight, and demonstrated his efforts to cure the delinquent tax issue that resulted in Respondent Ventura's suspended status with the Secretary of State. While Respondent Ventura operated more than three years with a suspended license, there is no direct evidence of public harm. Consequently, revocation or suspension of Respondents' licenses is unwarranted in this matter. Rather, continued licensure on a restricted basis is sufficient to ensure the public's protection.

Costs of Prosecution

9. Cause exists pursuant to Business and Professional Code section 10106 to order Respondent to pay the reasonable costs of \$1,505.75 set forth in Factual Finding 15. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing agency must consider in assessing costs. It must not assess the full costs of 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. The agency must also consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge to the discipline or is unable to pay.

10. Respondents proffered no evidence demonstrating they were unable to pay the reasonable costs. In fact, Respondent Villanueva testified that Respondents would pay the Department's costs. In light of the foregoing, Respondent shall pay the Board its reasonable costs in the amount of \$1,505.75.

ORDER

Respondent Ventura

1. All licenses and licensing rights of Respondent Ventura County Real Estate, Inc. under the Real Estate Law are revoked; provided, however, a restricted corporate real estate broker license shall be issued to Respondent Ventura pursuant to Section 10156.5 of the Business and Professions Code if Respondent Ventura 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 Ventura 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:

A. The restricted license issued to Respondent Ventura may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent Ventura's conviction or plea of nolo contendere to a crime which is substantially related to Respondent Ventura's fitness or capacity as a real estate licensee.

B. The restricted license issued to Respondent Ventura may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent Ventura 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.

C. Respondent Ventura 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 three years have elapsed from the effective date of this Decision.

D. Pursuant to section 10106 of the Business and Professions Code, Respondent Ventura shall be jointly and severally liable with Respondent Villanueva to pay the Commissioner's reasonable cost for investigation and enforcement, totaling \$1,505.75, in this matter, within 60 days of the effective date of this Decision.

E. The Commissioner may suspend the restricted license issued to Respondent Ventura pending a hearing held in accordance with section 11500 of the Government Code, if payment as ordered in subparagraphs D is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondent Ventura and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent Ventura enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

Respondent Noe Villanueva

1. All licenses and licensing rights of Respondent Noe Villanueva under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent Villanueva pursuant to Section 10156.5 of the Business and Professions Code if Respondent Villanueva 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 Villanueva 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:

A. The restricted license issued to Respondent Villanueva may be
suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent Villanueva's conviction or plea of nolo contendere to a crime which is substantially related to Respondent Villanueva's fitness or capacity as a real estate licensee.

B. The restricted license issued to Respondent Villanueva may be
suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent Ventura 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.

C. Respondent Villanueva 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 three years have elapsed from the effective date of this Decision.

D. Pursuant to section 10106 of the Business and Professions Code,
Respondent Villanueva shall be jointly and severally liable with Respondent Ventura to pay the Commissioner's reasonable cost for investigation and enforcement, totaling \$1,505.75, in this matter, within 60 days of the effective date of this Decision.

E. The Commissioner may suspend the restricted license issued to
Respondent Villanueva pending a hearing held in accordance with section 11500 of the Government Code, if payment as ordered in subparagraphs D is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondent Villanueva and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent Villanueva enters into an agreement

satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATE: October 24, 2019

DocuSigned by:

Carla L. Garrett

CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings