

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE

DEC 01 2020

STATE OF CALIFORNIA

DEPT. OF REAL ESTATE

By 

In the Matter of the Accusation of:)	DRE No. H-41497 LA
ALONSO GUZMAN RODRIGUEZ,)	OAH No. 2019100595
Respondent.)	

DECISION

The Proposed Decision dated October 09, 2020, 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.

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.

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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on DEC 31 2020.

IT IS SO ORDERED 11.23.20

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

In the Matter of the Accusation against:

ALONSO GUZMAN RODRIGUEZ,

Respondent.

Agency No. H-41497 LA

OAH No. 2019100595

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, heard this matter by video and telephonic conference on September 9, 2020, in Los Angeles, California.

Julie To, Counsel, represented Veronica Kilpatrick (complainant), Supervising Special Investigator, Department of Real Estate (Department). Ms. To appeared at the hearing by videoconference.

Alonso Guzman Rodriguez (respondent) represented himself and appeared at the hearing by telephone.

Oral and documentary evidence was received and argument heard. The record was closed, and the matter was submitted for decision on September 9, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 15, 1999, the Department issued a real estate salesperson license to respondent. On August 16, 2006, the Department terminated this real estate salesperson license and issued a real estate broker license to respondent. This real estate broker license is scheduled to expire on August 15, 2022, unless renewed. Respondent currently holds licensing rights under the Real Estate Law, Part 1 of Division 4, of the Business and Professions Code.

2. On September 10, 2019, complainant filed the Accusation in her official capacity. Respondent timely filed a Notice of Defense. This hearing ensued.

Prime Escrow Service and Mountain View Escrow

3. Respondent performs real estate sales and represents buyers and sellers. He employs 15 salespersons and maintains three active fictitious business names: AGR and Associates, Noble & Associates Realty, and Modern Realtors RE.

4. Sometime before April 14, 2017, on a date not established by the record, Paula Jimenez, a.k.a. Paula Rodriguez (Jimenez) approached respondent and offered to perform in-house escrow services¹ for his real estate transactions. Respondent

¹ Under California Financial Code section 17006, subdivision (a)(4), a real estate broker licensed by the Department may perform escrow activities as an adjunct to their licensed real estate services as long as the broker is an agent or a party to the real estate transaction and performing acts requiring a real estate license.

accepted the offer, as he wished to start an escrow company for his own agents. Jimenez is not and has never been licensed by the Department in any capacity.

5. A. On April 14, 2017, respondent added Prime Escrow Service, a Non Independent Broker Escrow (Prime Escrow), and Mountain View Escrow, a Non Independent Broker Escrow (Mountain View Escrow), as fictitious business names to his license. Jimenez, as Paula Rodriguez, incorporated Prime Escrow in 2013, and she was listed as its Chief Financial Officer on a filing with the Secretary of State in 2015. (Ex. 8, p. 3, 5.) On a fictitious business statement filed with Riverside County in 2016, Jimenez was listed as the Chief Executive Officer of Mountain View Escrow. (Ex. 13, p. 2.).

B. On the same date, respondent obtained a branch office registration for the address at 151 East Main Street, San Jacinto (San Jacinto branch office).

C. By respondent's own admission, he added Prime Escrow and Mountain View Escrow to his license for Jimenez to conduct in-house escrow activities on his behalf, and he added the San Jacinto branch office as the location from which Jimenez would operate the two escrow companies.

Escrow Activities by Prime Escrow

6. Prime Escrow maintained a business checking account at J.P. Morgan Chase Bank (Chase Account). The Chase Account, named "Paula Jimenez, DBA Prime Escrow Service" and bearing the last four digits 6939, was established by Jimenez on February 13, 2013, as its sole proprietor and sole signatory. (Ex. 7, p. 12.)

7. On November 4, 2016, Rafael Nadal (Nadal) issued a \$5,000 check to Prime Escrow as a deposit for his purchase of a property located at 1671 and 1673

South Kingsley Avenue, Los Angeles (Kingsley Property). (Ex. 5, p. 158.) On the same date, Jimenez deposited the \$5,000 into the Chase Account. (Ex. 17, p. 12.)

8. On April 11, 2017, Nadal and the seller of the Kingsley Property, Lonnie Donaldson, wrote a letter instructing Prime Escrow to cancel escrow on the Kingsley Property and to return the \$5,000 deposit to Nadal (Cancellation Instructions). These Cancellation Instructions were mailed to Prime Escrow at the San Jacinto branch office by certified mail, and a U.S. Post Service receipt shows that they were received by the San Jacinto branch office on May 15, 2017. (Ex. 5, p. 159.)

9. The record did not establish whether Prime Escrow or Jimenez ever refunded the \$5,000 deposit to Nadal.

10. On May 24, 2018, respondent cancelled the branch office registration for the San Jacinto branch office. On August 20, 2018, respondent cancelled Prime Escrow and Mountain View Escrow as fictitious business names from his license.

Audit of Respondent's Real Estate Activities

11. Based on a consumer complaint, the Department's auditor, Shirley Xie (Xie), conducted an audit of respondent's real estate activities for the period of January 1, 2016, to November 18, 2018. Xie performed the audit on an intermittent basis from December 31, 2018, to February 28, 2019.

12. On December 31, 2018, Xie served respondent with a subpoena to produce his book and records relating to his real estate activities for the audit examination at the Department's District Office on January 15, 2019. Respondent produced all relevant records and books in his possession, but he did not produce any records pertaining to the escrow transaction on the Kingsley Property.

13. Xie did not find any irregularities with respect to the records and books produced by respondent. However, she found that Rodriguez conducted some of his real estate sales activities using the fictitious business name "AGR & Associates," when his licensed fictitious business name is "AGR and Associates." Additionally, she found that during the audit period, respondent conducted real estate sales activities at two office locations that were not registered with the Department as branch offices. The unregistered branch offices were located at 4745 Ivy Street, Pico Rivera (Pico Rivera branch office), and 4025 Florence Avenue, #B, Downey (Downey branch office).

Respondent's Evidence

14. Respondent has worked in the real estate field for over 20 years with no prior record of discipline.

15. A. Respondent explained his involvement with Prime Escrow and Jimenez in prior written statements submitted to the Department, which are summarized below.

B. In an email addressed to Xie dated February 6, 2019, respondent stated that he had established the San Jacinto branch office for Jimenez to start an in-house escrow business. He did not have a lease agreement with Jimenez, and other than Jimenez, he did not hire or work with anyone else at the San Jacinto branch office. Respondent reported that he visited the San Jacinto branch office only on two occasions, the first to "view the location" and the second "to buy and install escrow software in a computer." (Ex. 15, p. 6.)

C. In a statement provided to Xie dated February 13, 2019, respondent wrote that he had no knowledge of the \$5,000 deposit that Jimenez received.

Respondent further averred that “[he] did not open trust accounts nor did [he] collect trust funds in a [sic] shape or form.” (Ex. 15, p. 1.)

16. At the hearing, respondent’s testimony regarding his relationship to Prime Escrow and Jimenez was consistent with his prior statements. In addition, respondent admitted that he did not know what activities were occurring at the San Jacinto branch office. Respondent stated that he did not ever collect the mail at the San Jacinto office. According to respondent, while Prime Escrow and Mountain View Escrow were under his license, he rarely spoke to Jimenez, perhaps three times every month. The substance of those conversations concerned starting up the in-house escrow business, but he never asked her about whether she was conducting any escrow activity. Respondent asserted that he did not supervise Jimenez because “there was no escrow to supervise” (his words).

17. Respondent also testified that he did not retain any trust records pertaining to the Kingsley Property because he was unaware of Jimenez’s escrow activities. According to respondent, he first became aware of the trust records pertaining to the Kingsley Property when Xie showed him the records during the audit examination. Respondent cancelled Prime Escrow and Mountain View Escrow as fictitious business names in May 2018, after he had lost all contact with Jimenez.

18. Respondent admitted that he used an ampersand rather than the word “and” in his fictitious business name and that he did not register the Pico Rivera and Downey branch offices with the Department during the audit period.

Costs

19. Complainant submitted evidence of the costs of investigation and enforcement of this matter, summarized as follows: 126.5 hours in investigation

activities by three Department employees at rates ranging from \$37 to \$80 per hour (subtotal \$7,856.95); and 13.80 hours of legal services at the rate of \$89 per hour (subtotal \$1,228.20). The total costs of investigation and enforcement claimed are \$9,085.15.

20. Respondent's income is approximately \$2,300 per month. On a monthly basis, he pays \$800 in rent and \$450 in child support for two minor children.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The standard of proof for complainant to prevail on the Accusation is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Causes for Discipline

2. A. Cause does not exist to suspend or revoke respondent's real estate broker license for his use of an unlicensed fictitious business name, pursuant to

Business and Professions Code section 10159.5 and California Code of Regulations, title 10, section 2731.²

B. Although respondent used "AGR & Associates" in his real estate transactions when his licensed fictitious name is "AGR and Associates," the ampersand is a common symbol representing the conjunction "and." Neither Business and Professions Code section 10159.5 nor 10 CCR section 2731 specifically prohibits the use of a commonly understood symbol in the place of a word such as "and." Respondent's use of the ampersand in place of the word "and" is also not misleading and does not constitute false advertising. Therefore, it cannot be concluded that respondent used an unlicensed fictitious business name when he used "AGR & Associates" in his real estate transactions. (Factual Findings 13 and 18.)

3. Cause exists to suspend or revoke respondent's real estate broker license for his failure to register the Pico Rivera and Downey branch offices during the audit period, pursuant to Business and Professions Code section 10163. (Factual Findings 13 and 18.)

4. A. Cause does not exist to suspend or revoke respondent's real estate broker license for his failure to retain all books, records, and documents relating to his real estate activities, pursuant to Business and Professions Code section 10148. (Factual Findings 12 and 17.)

B. Subdivision (a) of Business and Professions Code section 10148 provides in part: "A licensed real estate broker shall retain for three years copies of all

² All references to the California Code of Regulations are to title 10, and are designated "10 CCR."

listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required." Complainant contends that respondent failed to retain trust records pertaining to the Kingsley Property. However, there was no evidence that respondent had executed any of the trust records pertaining to the Kingsley Property or that he had obtained them in connection with any transaction he performed. The record established that Jimenez was in sole control and custody of the Chase Account and that respondent had no knowledge of this trust account or any of the escrow activities surrounding the Kingsley Property.

5. Cause exists to suspend or revoke respondent's real estate broker license for his failure to exercise reasonable supervision and control over the activities at the San Jacinto branch office, pursuant to Business and Professions Code section 10177, subdivision (h), and 10 CCR section 2725. By respondent's own admission, he was not aware of Jimenez's escrow activities at the San Jacinto branch office. He did not collect the mail at that office; he did not maintain consistent contact with Jimenez; and he did not ask her about any escrow activities she was conducting. (Factual Findings 15 and 16.)

6. Cause exists to suspend or revoke respondent's real estate broker license for negligence based on his failure to adequately supervise Jimenez, pursuant to Business and Professions Code section 10177, subdivision (g). (Factual Findings 15 and 16.)

7. Cause exists to suspend or revoke respondent's real estate broker license for his willful disregard of the Real Estate Law based on his failure to adequately supervise Jimenez, pursuant to Business and Professions Code section 10177, subdivision (d). (Factual Findings 15 and 16.)

Disposition

8. Complainant established four separate causes for discipline against respondent's real estate broker's license. The first cause, failure to register two branch offices with the Department during the audit period, is minor in nature. However, the other three causes, relating to respondent's failure to exert reasonable supervision and control over Jimenez and the activities she conducted at the San Jacinto branch office, are more serious. As a real estate broker, respondent had a responsibility to review and manage the activities of Jimenez who was operating out of a branch office under his license, and whose companies, Prime Escrow and Mountain View Escrow, were added to respondent's fictitious business names.

9. However, no evidence was presented to show that the \$5,000 was not returned to Nadal or that he suffered any harm as a result of respondent's negligence. Three years have elapsed since the escrow on the Kingsley Property was cancelled. Respondent testified in a forthright manner at the hearing and admitted many of his mistakes. Respondent has also been licensed by the Department since 1999, without any prior disciplinary record.

10. Discipline of a Department licensee is not penal in nature. The purpose is not to impose additional punishment on the licensee, but to protect the public. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Under all the circumstances, the public will be adequately protected if a restricted real estate broker license is issued to respondent for a period of three years. Because respondent's misconduct involves his professional responsibilities as a real estate broker, he will be required to take and pass a Professional Responsibility Examination as a part of the probationary conditions.

Recovery Costs

11. Under Business and Professions Code section 10106, the Department may recover costs “not to exceed the reasonable costs of the investigation and enforcement” of this matter. As set forth in Factual Finding 19, the investigation and enforcement costs claimed are \$9,085.15.

12. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost 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 provision did not deter individuals from exercising their right to a hearing. Thus, an agency must not assess the full costs where it would unfairly penalize the 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 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; the agency must consider a respondent’s ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Id.* at p. 45.)

13. In this case, complainant raised six different causes for discipline, of which four were established. Of these four established causes for discipline, only one, failure to register two branch offices, resulted from the investigation conducted by the Department. The remaining three causes for discipline (failure to supervise, negligence, and willful disregard of the Real Estate Law) were established by respondent’s own admissions. Therefore, the Department’s investigation was disproportionately large

while it proved relatively innocuous misconduct. Additionally, respondent has limited ability to pay, as his monthly income is \$2,300, and he has expenses totaling \$1,250. These circumstances warrant a reduction in the costs of investigation and enforcement to one-sixth of the claimed amount of \$9,085.15. Consequently, the reasonable costs of investigation and enforcement are \$1,514.20.

ORDER

All licenses and licensing rights of respondent Alonso Guzman Rodriguez under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

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

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate

Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations, or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent 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 appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

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6. Respondent shall pay costs of \$1,514.20 to the Real Estate Commissioner in the form of a cashier's check or certified check within 30 days of the effective date of this Decision, or on a payment plan by agreement with the Commissioner.

DATE: October 9, 2020

DocuSigned by:
Ji-Lan Zang
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JI-LAN ZANG

Administrative Law Judge
Office of Administrative Hearings