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JUL 17 2023

DEPT. OF REAL ESTATE

By _____

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of:)	DRE No. H-42419 LA
)	
CYNTHIA QUEZADA,)	OAH No. 2023020149
)	
Respondent.)	

DECISION

The Proposed Decision dated June 7, 2023, 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.

Page 3, paragraph 6, "A salesperson license in NBA status in not eligible to sell real estate" shall be amended to "A salesperson license in NBA status is not eligible to sell real estate."

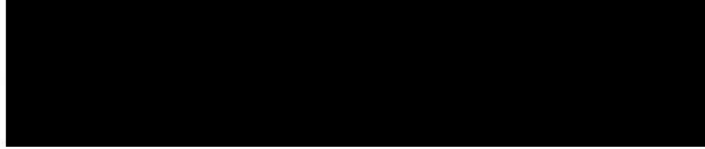
Page 7, paragraph 5, "When River Rock Mortgage's broker license expired, respondent was no longer affiliated with a license real estate broker . . ." shall be amended to "When River Rock Mortgage's broker license expired, respondent was no longer affiliated with a licensed real estate broker . . ."

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 Aug. 7, 2023.

IT IS SO ORDERED 7.12.23.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation against:

CYNTHIA QUEZADA, Respondent.

Agency Case No. H-42419-LA

OAH No. 2023020149

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on May 9, 2023, by videoconference.

Complainant Maria Suarez, a Supervising Special Investigator, (complainant) was represented by Laurence D. Haveson, Counsel, Department of Real Estate (DRE).

Respondent Cynthia Quezada (respondent) represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 9, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant made, filed and served the Accusation dated November 14, 2022 in her official capacity as a Supervising Investigator.

2. Respondent filed a timely Notice of Defense, requested a hearing on the allegations and this hearing ensued. All jurisdictional requirements have been met.

Background

3. The Accusation was initially styled as "In the Matter of the Accusation of Alex Rayos Castro and Cynthia Quezada" and arose from an audit of respondent's Broker Alex Rayos Castro (Castro). The Accusation alleges three causes for discipline: Audit Violations (Against Castro); Conducting Real Estate Activities Requiring a License and Unlawful Receipt of Compensation (against respondent Quezada); and Unlawful Payment of Compensation (against Castro). The Accusation arose from findings in the DRE's Audit No. SD210026, completed on April 14, 2022, covering Castro's activities for the period of June 1, 2020 to January 31, 2022 (Audit).

4. Castro did not file a Notice of Defense. Accordingly, a default was entered against Castro on January 19, 2023, and a decision adopted, effective February 14, 2023, revoking all of Castro's real estate licenses and licensing rights and ordering the payment of \$7,243.29 upon the filing of an application for a real estate broker license or petition for reinstatement.

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Allegations against Respondent Quezada

5. Respondent has been licensed by the DRE as a real estate salesperson, license ID 01819131 since November 28, 2007. Her license is scheduled to expire on November 21, 2025, unless renewed. DRE records show respondent was associated with River Rock Mortgage, DRE license ID 01399316 from November 22, 2017 to September 9, 2019. River Rock Mortgage is a corporate license owned by Castro. During part of this time, respondent was caring for family members, was only minimally involved in River Rock Mortgage and not actively and consistently selling real estate. When respondent was ready to devote herself to sales full-time again in 2017, she continued her real estate sales under Castro at River Rock Mortgage.

6. Unbeknownst to respondent, Castro was involved in a trade name/trademark dispute with another company that resulted in his abandoning the name "River Rock Mortgage." Castro allowed the broker license for River Rock Mortgage to expire on September 9, 2019. By operation of law, respondent's license was discontinued from River Rock Mortgage and listed with no broker affiliation (NBA) from September 10, 2019 to August 25, 2021. A salesperson license in NBA status is not eligible to sell real estate. DRE did not notify respondent of the change to NBA status when it occurred on September 10, 2019 and she had no reason to believe that her license was anything other than current until she was later alerted by the DRE, after its audit of Castro.

7. Castro also did business under the name of Silver Wing Realty, a fictitious business name registered with the DRE. Prior to the expiration of the River Rock Mortgage broker license, Castro had moved all salesperson licenses, except that of respondent, under his own individual broker license and Silver Wing Realty. At one point, Castro instructed respondent to start changing all of her forms and sales

materials to Silver Wing Realty. Respondent understood that Silver Wing Realty would be the company's new name. Respondent was a little confused by some of Castro's interchanging of the company names such as with local realty boards and found it difficult to change the forms to reflect what she understood the correct company name to be. She worked with her local board to resolve the issue and have her information listed as a salesperson for Silver Wing Realty, per Castro's instruction.

8. The failure to move respondent's license was an oversight and respondent was unaware her broker had not handled her licensing issues until she was contacted by DRE Special Investigator Trevor Gonzalez on August 25, 2021. At that time, Special Investigator Gonzales requested copies of all documents pertinent to certain transactions conducted by respondent and advised her that she was "not properly licensed and should not engage in any real estate business activity." He also advised that her license had been listed as NBA since September 9, 2019.

9. Respondent cooperated completely with the DRE. She immediately responded, provided all requested materials and submitted a Salesperson Change Application (Form RE e214), signed and submitted electronically on August 26, 2021 requesting that Castro be listed as her New Responsible Broker. Castro admitted to the auditor that he understood respondent to be working under his broker license and was not aware her license was never moved from River Rock Mortgage. He advised the auditor that he had instructed his salespeople to move their licenses from the River Rock Mortgage Corporate license to his Broker's license and operate under the fictitious business name Silver Wing Realty. When he learned of the oversight, he immediately assisted respondent to have her license moved to the appropriate broker.

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10. Respondent admitted that On July 16, 2020, she executed a Residential Purchase Agreement as the agent for the Buyer's Broker, Silver Wing Realty, in which the Buyer made an offer to purchase real property located at 652 Bahia Street, Imperial California (Bahia Property). The Buyer's offer for the Bahia Property was accepted by the seller on July 17, 2020. According to the "Instructions to Pay Commission" for the Bahia Property, dated August 20, 2020, the seller authorized the escrow company to pay a selling commission of \$6,800 to Silver Wing Realty at the close of escrow. On August 25, 2020, Castro executed a "Commission Disbursement Authorization" instructing the escrow company to pay respondent \$6050 and \$750 to himself as commission on the Bahia Property.

11. Respondent admitted the allegations in the Second Cause for Discipline contained in the Accusation. She apologized to the DRE and expressed remorse for her actions. Respondent has no history of discipline, there was no evidence of complaints about the Bahia Property purchase and she was unaware that her license was not properly associated with Castro and his company at the time of the transaction. Respondent understands why the DRE is concerned about the incident.

12. Respondent is the mother of five adult children who are all in college and university programs at this time. Respondent estimates that her average gross income from all sources is \$65,000 per year.

Costs

13. Complainant established by declarations, a total of \$4055.85 in prosecution and investigation costs. (Audit costs are alleged in the Accusation, but not sought against respondent who is a salesperson.) Prosecution costs consisted of \$1,689.60 in attorney charges consisting of 17.6 hours of DRE attorney time charged at

\$96 per hour. Investigation costs consisted of \$2,366.25 in DRE investigator time charges at rates of \$79 and \$97 per hour for almost 30 hours of investigator time.

The costs were reasonable overall.

LEGAL CONCLUSIONS

1. The burden of proof in this matter is on the complainant. The standard of proof for complainant to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

Cause for Discipline

2. Cause for discipline of respondent's real estate salesperson license pursuant to Code sections 10130 and 10137 in conjunction with Code sections 10177, subdivisions (d) and (g) exists based upon her performance of real estate activities including acceptance of a real estate commission from sales while her license was in NBA status and not affiliated with a licensed broker on DRE records based upon factual findings 3 to 10.

Level of Discipline

3. 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; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) The statutes relating to the licensing of real estate professionals are designed to protect the public from

dishonest, untruthful, and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.)

4. The amount of evidence required to justify licensure varies according to the seriousness of the misconduct in question: the more serious the misconduct, the greater the level of rehabilitation. (*In re Menna* (1995) 11 Cal.4th 975, 987.) In most cases, rehabilitation is shown by "sustained conduct over an extended period of time." (*Id.* at p. 991.) Fully acknowledging the wrongfulness of past actions also is an important step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

Disposition

5. When River Rock Mortgage's broker license expired, respondent was no longer affiliated with a license real estate broker, as required. DRE placed respondent's license on NBA, but did not notify her of the change in status. Not knowing her license was invalid, respondent continued her real estate work, represented one buyer on the Bahia property transaction and was compensated by Castro for the transaction. Once the DRE notified respondent of her NBA status, she immediately filed the appropriate paperwork to have her license associated with Castro. Neither respondent nor Castro, her broker, were aware of the association issue until August 25, 2021 when respondent was notified by the DRE after an audit of Castro. There is no doubt that respondent should have paid more attention to the details of her license affiliation and that any failure to keep her license current and validly associated with a licensed real estate broker is her sole responsibility. Respondent demonstrated her seriousness about her licensing issues by immediately taking action to associate her license appropriately when she became aware of the situation. All evidence considered, a sixty (60) day suspension, stayed, and payment of a portion of the DRE's costs is sufficient to ensure

public protection under the circumstances of this case. Respondent has no prior discipline and is unlikely to allow these circumstances to recur.

Costs

6. Code section 10106, provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the DRE, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the Supreme Court directed the administrative law judge and the licensing agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Accordingly, the DRE 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 DRE must consider a respondent's subjective good faith belief in the merits of her position and whether the respondent has raised a colorable challenge; the DRE must consider a respondent's ability to pay; and the DRE may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that respondent engaged in relatively innocuous misconduct. (See *Zuckerman, supra*, at p. 45.)

8. Here, only one of the three causes for discipline in the Accusation is pertinent to respondent. The investigation of respondent was a very small part of a larger audit against her broker and the charge against her involved a specific and

discreet issue. It did not involve substantially more work to investigate the case against her than it did the larger case against Castro. Respondent did not contest that her license was not appropriately associated with Castro, and had been inadvertently left associated with River Rock Mortgage, Castro's expired corporate real estate license. Under these circumstances and considering the minimal discipline imposed below, the reasonable recoverable costs of investigation and prosecution in this matter are reduced to \$1,000 (approximately 25 percent of the costs associated with the case.).

ORDER

All licenses and licensing rights of respondent under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Decision; provided, however, that said suspension shall be stayed for one (1) year upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and that no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

2. 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.

3. Respondent shall pay the DRE reasonable investigation and enforcement costs of \$1,000 within one year of the effective date of this decision or on a payment plan approved by the Commissioner.

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency.

DATE: **06/07/2023**

Glynda Gomez

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings