

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE ALASKA REAL ESTATE COMMISSION**

In the Matter of)
)
 SANDRA NUNES)
 _____)

OAH No. 13-0588-REC
Agency No. 2012-000979

DECISION

I. Introduction

Sandra Nunes is a former real estate salesperson who was disciplined by the Real Estate Commission in 2006, and then surrendered her license in 2010 when faced with a subsequent disciplinary action. She applied for a new real estate salesperson’s license in 2012. The Commission denied her application. Ms. Nunes requested a hearing to challenge the denial of her application.

At hearing, Ms. Nunes failed to meet her burden of proof, by a preponderance of the evidence, to establish that she could practice as a real estate salesperson competently and safely. The Commission should therefore exercise its discretion to deny her application for a real estate salesperson’s license. During the course of the hearing Ms. Nunes requested, instead of a full real estate salesperson’s license, that she receive a license that allowed her to practice subject to supervision by another licensed salesperson, *i.e.*, that she be approved for licensure as a licensed assistant. Because there is no separate license application for a “licensed assistant,” and because the statute allowing a real estate broker/assistant broker/salesperson to use a “licensed assistant” requires that a licensed assistant be a fully licensed real estate salesperson, that request should also be denied.

II. Facts

A. The Mora Transaction and License Suspension

Sandra Nunes was licensed as a real estate salesperson in 2002.¹ In 2005, Ms. Nunes was the real estate salesperson for a buyer named Josefina Mora. Ms. Mora was not able to financially qualify for a real estate loan because she had an outstanding car loan. Ms. Nunes then obtained a loan in her own name and purchased the vehicle from Ms. Mora, which removed Ms. Mora’s car loan from her record and enabled her to qualify for her home loan. Ms. Nunes kept the vehicle at her home for only a month or two, and then transferred the vehicle and the

¹ Ex. A, p. 97.

responsibility for the car loan payments back to Ms. Mora.² However, the sale of the vehicle to Ms. Nunes, whether real or a sham, was not disclosed as part of the real estate loan transaction. Instead, Ms. Nunes drafted a letter, which was given to Ms. Mora's real estate lender; it stated that Jessica Urena had made a gift to Ms. Mora which allowed her to pay off the car loan.³ Ms. Urena was a real estate client of Ms. Nunes. She did not give or loan the money to Ms. Mora to pay off the car loan. She did not draft the gift letter. She did not sign the gift letter. Instead, Ms. Nunes admittedly drafted and signed the gift letter, signing Jessica Urena's name -- not her own.⁴

The gift letter to Ms. Mora came to light during an audit conducted by Ms. Mora's lender. As a result, Ms. Nunes entered into a Memorandum of Agreement whereby, without admitting to the facts underlying the Mora transaction, she agreed to be disciplined by the Real Estate Commission. Under the terms of the Memorandum of Agreement, her real estate license and ability to engage in the practice of real estate were suspended for a one year period, effective the day following the Commission's adoption of the Memorandum of Agreement.⁵ The Commission adopted the Memorandum of Agreement on March 13, 2006.⁶

Both Ms. Nunes and Ms. Urena testified at hearing regarding the Mora transaction.⁷ Their testimony was substantially different and their interaction acrimonious, each accusing each other of lying. Ms. Nunes testified that Ms. Urena knew of the Mora gift letter in advance, and authorized her to draft it and sign it in her name. Ms. Urena denied any knowledge of or participation in the gift letter, testifying that she did not know Ms. Mora, that she did not authorize the drafting of the gift letter, she did not authorize Ms. Nunes to use her name, and did not tell Ms. Nunes to sign her name to it. She testified that she did not find out about the Mora gift letter until she was contacted by a bank investigator, at which point she called the police. She related that Ms. Nunes ended up being interviewed by the police at her house and that Ms. Nunes left in tears. Ms. Nunes did not contradict Ms. Urena's testimony regarding the police contact.

Ms. Nunes, however, attempted to impeach Ms. Urena's testimony that Ms. Urena had nothing to do with the gift letter. She stated that Ms. Urena had called her sister several times

² Sandra Nunes August 27, 2013 testimony.

³ Ex. C.

⁴ Sandra Nunes August 27, 2013 testimony; Ex. C.

⁵ Ex. A, pp. 118 – 125.

⁶ Ex. A, p. 126.

⁷ Sandra Nunes and Jessica Urena August 27, 2013 testimony.

after the Mora incident to ask how Ms. Nunes was doing. Ms. Nunes stated she told her sister that she did not “want to talk to Jessica [Urena] because when she had the chance to go talk to me she wouldn’t. So, I left it at that.”⁸ Ms. Nunes testified that Ms. Urena’s husband contacted her after her suspension was over and asked her to represent Ms. Urena in a real estate transaction and that she refused, stating to him “are you kidding me? I’m in this whole deal . . . problem because of her.”⁹

Oscar Cedano, Ms. Nunes’ brother, testified that Ms. Urena contacted him afterwards to ask how Ms. Nunes was doing, and described Ms. Urena as being apologetic and shy.¹⁰ Gilma Cedano, Ms. Nunes’ sister, also testified that she was contacted by Ms. Urena several times and asked how Ms. Nunes was doing.¹¹

Ms. Nunes expressed regret for the Mora transaction. She admitted that it was the wrong thing to do, but felt that it was not motivated by greed on her part and that she did not take advantage of Ms. Mora.

B. The Fernandez Transaction and License Surrender

Ms. Nunes was representing buyers Bob and Elba Fernandez in a pending real estate transaction when the Memorandum of Agreement suspending her license due to the Mora transaction was adopted on March 13, 2006.¹² On March 21, 2006, seven days after her license suspension went into effect, she signed an “Addendum or Amendment to the Purchase and Sale Agreement” as a real estate agent. That Addendum extended the closing date for the real estate sale and removed Mr. Fernandez as a buyer, making Ms. Fernandez the sole buyer.¹³

Ms. Nunes was told by the Real Estate Commission investigator that she could only do clerical work or paperwork that did not require licensure during her suspension period. She admitted that she signed the Fernandez Addendum when she should not have, and made a mistake. She did not recall the reason she signed the Addendum. She stated, however, that she did not take advantage of the Fernandezes.¹⁴

Oscar Cedano was a licensed real estate salesperson with the same real estate company as Ms. Nunes at the time of the Fernandez transaction. He recalled Mr. Fernandez as being a

⁸ August 27, 2013 hearing at 1:48:45.

⁹ August 27, 2013 hearing at 1:49:00.

¹⁰ Oscar Cedano August 27, 2013 testimony.

¹¹ Gilma Cedano August 29, 2013 testimony.

¹² Ex. A, pp. 105 – 111.

¹³ Ex. A, p. 104.

¹⁴ Sandra Nunes August 27, 2013 testimony.

difficult and intimidating person. He thought that Ms. Nunes' suspension allowed her to finish pending transactions, but was unable to identify who might have authorized her to do so.¹⁵

Ms. Nunes' suspension expired in March 2007 and she starting practicing real estate again, subject to a two year probationary period.¹⁶ She was then sued in April 2010 by Ms. Fernandez, who alleged that she had committed fraud in connection with the 2006 purchase of the Fernandez home.¹⁷ That case was subsequently settled in January 2011.¹⁸ The Fernandez lawsuit triggered an investigation of Ms. Nunes where it was determined that she had signed the Addendum to the Fernandez real estate agreement while she had been suspended.¹⁹ Ms. Nunes surrendered her real estate license in June 2010 during the course of that investigation. The document Ms. Nunes signed to surrender her license included the statement:

I further understand that before my license to practice as a real estate licensee in Alaska can be reinstated, I will have to prove to the above Commission that I am competent to resume practice, and am able to do so with skill and safety.^[20]

C. Post Surrender Employment

Ms. Nunes has young children. She stayed at home and raised them for approximately two and one-half years after she surrendered her license. She began working part-time in December 2012 for a large corporate rental and residential complex business. In that job, she has a number of financial responsibilities, which involve bookkeeping, handling accounts receivables and payables, making bank deposits, drafting financial reports, and handling the personal business of the company's owner. She does not have signature authority on the bank accounts. She does not provide property management services for the business.

Ms. Nunes began a second part-time job in May 2013 for a heating company. That job also involves financial responsibilities—handling accounts receivables and collections. She does not handle payables or make deposits for the heating company.²¹

D. Character Witnesses

Ms. Nunes presented several witnesses who testified on her behalf. D'Ette Owen, the current and former president of the Anchorage Board of Realtors, is a licensed real estate salesperson who has known Ms. Nunes since about 1990 and has worked with her on a couple of

¹⁵ Oscar Cedano August 27, 2013 testimony.

¹⁶ Ex. A, p. 66.

¹⁷ Ex. A, pp. 38 – 53.

¹⁸ Ex. A, pp. 23 – 25.

¹⁹ Ex. A, p. 113.

²⁰ Ex. A, p. 127.

²¹ Sandra Nunes September 3, 2013 testimony.

real estate transactions. She expressed her view that Ms. Nunes had no malicious intent in her previous transactions, that she has a great deal of remorse, and that justice has been served by Ms. Nunes' previous discipline. She places a high value on Ms. Nunes' character and would hire her as a showing assistant.²²

Mary Stephens is a real estate salesperson who used to work with and shared an office with Ms. Nunes. She believed Ms. Nunes' license suspension in 2006 was unfair; that Ms. Nunes was honest, not malicious or devious; and that Ms. Nunes would never intentionally do "anything to steer someone in the wrong direction." She has not worked with Ms. Nunes since 2006.²³

Mr. Cedano testified that Ms. Nunes provided a very high level of service as a real estate salesperson, and that with her bilingual skills and cultural background, she was a valuable resource to the Hispanic community.²⁴

D. Application

Ms. Nunes applied to reinstate her real estate license in August, 2012. The Commission reviewed Ms. Nunes' application at its March 20, 2013 meeting and denied it.²⁵ That denial is subject to reconsideration through the hearing process.

III. Discussion

Ms. Nunes has the burden of proof, by a preponderance of the evidence, because she is an applicant for reinstatement of her real estate salesperson license. In order for a person who has surrendered a license to be reinstated, the Commission must determine that "the licensee is competent to resume practice."²⁶ Further, according to the license surrender agreement that Ms. Nunes signed, she agreed that she was required to not only demonstrate competency, but the ability to practice with "skill and safety."²⁷ It is therefore Ms. Nunes' burden to prove, by a preponderance of the evidence, that she is competent to resume practice with skill and safety.

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²² D'Ette Owen August 27, 2013 testimony.

²³ Mary Stephens August 27, 2013 testimony.

²⁴ Oscar Cedano August 27, 2013 testimony. Ms. Nunes is originally from Colombia and is fluent in both English and Spanish. Sandra Nunes August 27, 2013 testimony.

²⁵ Ex. A, pp. 11, 102.

²⁶ AS 08.01.075(e).

²⁷ Ex. A, p. 127.

Ms. Nunes' disciplinary history began with a fraudulent misrepresentation of a client's financial status (the Mora transaction). A week after her suspension for that misconduct went into effect, she signed the modification of contract in the Fernandez transaction. The Fernandez addendum was a material modification to a real estate contract because it eliminated Mr. Fernandez as a buyer and made Ms. Fernandez the sole buyer of the property. Signing it as the Fernandez's real estate salesperson constituted the unlicensed practice of real estate by Ms. Nunes because it involved communications with prospective real estate buyers, negotiating the terms of a sale, and holding out to the public that she was engaged in the practice of real estate, all of which require a real estate license.²⁸ Ms. Nunes surrendered her real estate license in 2010 after the signing of the Fernandez Addendum was discovered.

Ms. Nunes argued that she has already been adequately punished for her actions by the original suspension of her license and by her surrender of her license in 2010, and she has expressed her remorse and stated that she knows she made mistakes. However, with respect to the fraudulent Mora transaction, Ms. Nunes' presentation and testimony at the hearing showed that she is only nominally accepting responsibility.

It was clear that Ms. Nunes blamed Ms. Urena for not saying that she was part of the Mora fraud. While Ms. Urena denied any knowledge of the gift letter scheme, Ms. Nunes sought to pass some responsibility onto Ms. Urena by saying that she knew and agreed to let her name be used in the letter. Each accused the other of lying. It is not necessary to reconcile the differing testimonies or determine who was telling the truth. If Ms. Nunes was truly taking responsibility for the Mora gift letter misrepresentation and truly understood that it was fraudulent and her fault, she would not need to lessen her culpability by seeking to assign blame to one of her clients. Regardless of the possibility that Ms. Urena might have been involved, it was Ms. Nunes who authored the scheme, drafted the letter, and signed it, not as herself but as Ms. Urena. This was a fraud upon Ms. Mora's lender, and Ms. Nunes, as a real estate professional, must have known that her activity was at a minimum unethical and fraudulent.

With the Fernandez transaction, likewise, Ms. Nunes engaged in minimization and rationalization, taking only nominal responsibility for her actions. Although she said she understood she could do only clerical work while suspended, Ms. Nunes presented Mr. Cedano's testimony that he understood she could finish up her pending real estate transactions despite her suspension. This indicates that either Ms. Nunes has not been forthright with Mr. Cedano about

²⁸ See AS 08.88.161(8) and (10).

the nature of the suspension, or that she wishes the Commission to consider completion of her pending transactions a lesser infraction than engaging in new transactions. In either event, her presentation left the impression that she is seeking to minimize her responsibility.

As an applicant, it is Ms. Nunes' burden to demonstrate that she can practice competently and safely, *i.e.*, observe and follow the ethical and statutory requirements for being a realtor, such as not participating in fraud in a real estate transaction, and not practicing in an unlicensed manner. While there has been a substantial passage of time since the underlying events (2005 for the Mora transaction and 2006 for the Fernandez transaction), Ms. Nunes' continued attempt to deflect responsibility for her role in both the Mora and the Fernandez transactions suggests that she does not fully appreciate the gravity of her actions. As long as that lack of understanding persists, she cannot meet her burden and prove that she can competently and safely engage in the practice of real estate. Moreover, the recent employment she offers to prove her reliability—where she is responsible for handling the financial affairs of two businesses and for the owner of one of the businesses—has only existed for a matter of months. It is too recent to support a conclusion that she has earned back a basis for the Commission to trust her. As a result, her license application should remain denied.

At hearing, Ms. Nunes made an alternative request that she receive a license as an assistant, and not as a fully licensed real estate salesperson. The real estate statutes allow a person to work as an assistant, under the supervision of a licensed real estate salesperson or associate broker. However, the assistant must have a license: “[a] licensed real estate salesperson or licensed associate real estate broker may act as a licensed assistant to another licensed salesperson or associate real estate broker.”²⁹ The real estate licensing scheme therefore does not have a separate type of license for an assistant. Consequently, a denial of Ms. Nunes' license application would also prohibit her from being a licensed assistant.

IV. Conclusion

Ms. Nunes surrendered her real estate salesperson's license in 2010. In order to qualify for relicensure she was required to demonstrate that she could practice real estate competently and safely. As discussed above, Ms. Nunes continues to not take full responsibility for and fails

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²⁹ AS 08.88.398.

to appreciate the gravity of the two incidents that led to her initial suspension and subsequent license surrender. She has therefore failed to prove, by a preponderance of the evidence, that she can practice real estate competently and safely. The Commission should therefore exercise its discretion and deny her application in its entirety.

Dated this 18th day of September, 2013.

By: Signed
Lawrence A. Pederson
Administrative Law Judge

Adoption

The Alaska Real Estate Commission adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of December, 2013.

By: Signed
Signature
Anita Bates
Name
Chair, Real Estate Commission
Title

[This document has been modified to conform to the technical standards for publication.]