

FILED
APR - 7 2008

BEFORE THE DEPARTMENT OF REAL ESTATE **DEPARTMENT OF REAL ESTATE**

STATE OF CALIFORNIA

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In the Matter of the Accusation of)	No. H-34255 LA
)	L-2007090482
JEFFREY OWEN BLACK and)	
DANA LYNN POTTER,)	
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)	
Respondent(s).)	
)	

DECISION

The Proposed Decision dated February 29, 2008, 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 correction is made to the Proposed Decision:

Page 10, Footnote 6, "The one-day" is amended to read "The one-year".

This Decision shall become effective at 12 o'clock
noon on APR 28 2008.

IT IS SO ORDERED 4-3-08.

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby

BY: Barbara J. Bigby
Chief Deputy Commissioner

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

In the Matter of the Accusation of:

**JEFFREY OWEN BLACK and
DANA LYNN POTTER,**

Respondents.

Case No. H-34255 LA

OAH No. L2007090482

PROPOSED DECISION

This matter came on regularly for hearing on December 19 and 20, 2007, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Robin Trujillo (Complainant) was represented by Martha J. Rosett, Staff Counsel.

Jeffrey Owen Black (Mr. Black) and Dana Lynn Potter (Mr. Potter) (collectively Respondents) were present and were represented by Stephen A. Diguissepe, Attorney at Law.

Oral and documentary evidence was received. The record was held open through February 8, 2008, for the parties to submit closing briefs in accordance with a specified briefing schedule. The briefs were timely received. "Complainant's Closing Argument" was marked as Complainant's Exhibit 17 for identification. "Respondents' Closing Argument" was marked as Respondents' Exhibit R28 for identification. "Respondents' Exhibit 'A' to Closing Argument" was marked as Respondents' Exhibit R29 for identification. "Complainant's Reply to Respondents' Closing" was marked as Complainant's Exhibit 18 for identification.

On February 8, 2008, the record was closed, and the matter was deemed submitted for decision.

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In this case, Complainant alleges that Respondents, and/or each of them, violated certain statutes relating to the practice of real estate in California (1) by claiming or receiving illegal fees in connection with a Participation Agreement to provide title reinsurance on title insurance policies written for their real estate clients, (2) by taking secret or undisclosed compensation, commission or profit through their failure to disclose to their clients their relationship with the carriers for which they were providing reinsurance, and (3) by creating a corporation to circumvent the real estate laws and hide illegal compensation. Specifically, Complainant alleges violations of Business and Professions Code sections 10176, subdivision (g), 10177, subdivisions (d), (g) and (j), and 10177.4.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. The Accusation was made by Robin Trujillo, who is a Deputy Real Estate Commissioner of the State of California, acting in her official capacity.
2. On December 13, 1985, the Department of Real Estate (Department) issued a corporate real estate broker license to Pinnacle Estate Properties, Inc. (Pinnacle). The license was in full force and effect at all relevant times.
3. In 1979, the Department issued a real estate salesperson license to Respondent Black. Mr. Black was licensed by the Department as a real estate broker in approximately July 1986. Since 1986, Mr. Black has also been licensed by the Department as the broker-officer of Pinnacle. He was so licensed at all relevant times. Mr. Black's real estate broker license will expire on July 10, 2010, unless renewed. His officer license will expire on December 12, 2009, unless renewed.
4. In 1993, Mr. Black's broker and officer licenses were suspended for five days. The suspension was stayed subject to various terms and conditions. Neither the terms and conditions nor the reason(s) for the suspension was disclosed by the evidence.
5. In approximately December 1977, the Department issued a real estate salesperson license to Respondent Potter. The license was in full force and effect at all relevant times. It will expire on June 12, 2010, unless renewed.

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6. Respondents are, and have been, the sole owners of Pinnacle, having founded it in 1985. Pinnacle now has seven locations and employs 628 salespersons. In 2006, Pinnacle's gross income was approximately \$28,000,000. Respondents also own two escrow companies, which are licensed by the California Department of Corporations. One of those companies (Pinnacle Escrow) is a division of Pinnacle and serves only Pinnacle's clients. The other company, Ridgeway Escrow, is an independent company and is not so limited.

7. At all relevant times, Respondents carefully divided their labor. As responsible broker and Chief Financial Officer, Mr. Black oversaw sales, escrow operations and contracts, as well as certain legal aspects of the businesses. Mr. Potter operated a training program involving over 40 classes, set up office meetings for each of the seven offices, and motivated and worked with the agents. Since they operate two escrow companies in addition to their real estate company, both Mr. Black and Mr. Potter are, and have been, very much aware of their obligations regarding disclosures to clients. Mr. Potter teaches a disclosure class to their employees.

8. Respondents' companies have done, and continue to do, business with a number of title insurance companies. One of the largest of those companies is Fidelity National Financial, Inc. (Fidelity). Fidelity operates several subsidiaries including Fidelity National Title, Chicago Title, TICOR Title, American Title Company, Security Union Title, Security Title, Alamo Title, National Title Insurance Company of New York, Inc., Fidelity National Information Services, and AIS Fidelity Information Services.

9. In approximately April 2004, Rod Gordy, Fidelity's sales director for Los Angeles County and part of Orange County, and another individual from Fidelity, approached Mr. Black with a proposal that Respondents (more specifically, one or more of Respondents' companies) act as reinsurers for title insurance policies written by Fidelity for Respondents' clients. In August 2004, Fidelity presented a Power Point demonstration to Respondents which explained the details of the proposed reinsurance plan. The Power Point demonstration referred to program participants generally, and did not specifically target Respondents.

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10. According to that Power Point demonstration, the objective of the plan was to “generate an ancillary revenue stream by the formation of a Sponsored Captive Reinsurance Company (SCRC).” The plan contemplated that, when Fidelity or any of its subsidiaries issued a title insurance policy to one of Pinnacle’s clients, FNF Title Reinsurance Company (FNF), another Fidelity subsidiary, would execute reinsurance treaties with Respondents who would assume a percentage of the risk in return for an equal percentage of the premium. Under the plan, FNF would create a separate account, referred to as a “protected cell,” which would insulate Respondents from losses incurred by other participating reinsurers. Those reinsurers would each have their own protected cells. To participate in the program, Respondents would have to pay Fidelity an annual Participant Fee of \$10,000, and they would be required to post an irrevocable letter of credit in the sum of \$25,000 to secure their obligations to Fidelity. In addition, Fidelity would deduct a \$350 administration fee from Respondents’ share of the premium on each issued policy. In the Power Point demonstration, FNF represented that its overall claims history for 2003 was 4.73 percent of the premium. FNF also recommended that participants obtain an “outside legal opinion about the Initiative and whatever consumer disclosures may be required.” According to the Power Point demonstration, FNF was licensed and in good standing with the Vermont Department of Insurance. FNF also represented that an SCRC was a “RESPA¹ compliant vehicle created to allow participation in the profit or loss generated by reinsuring a portion of the title risks from transactions the participant has produced.”

11. Consistent with the division of labor Respondents had utilized through the years, Mr. Potter had little to do with the dealings involving Fidelity’s reinsurance offer. Mr. Black performed the vast majority of the work in that regard. Because of Fidelity’s size, stability and position in the industry, Mr. Black believed the program would be a safe one that would suit Respondents’ purposes of supplementing their companies’ income by branching into a related field. Neither Mr. Black nor Mr. Potter considered Fidelity’s reinsurance program to be a sham designed to provide illegal rebates or kickbacks.

12. Fidelity prepared a Participation Agreement and sent it to Respondents who, in turn, forwarded it to their attorney. On August 29, 2004, the attorney wrote to Mr. Black approving the Participation Agreement and opining as follows: “It is my assessment that the terms of the agreement adequately share the loss and benefits in an acceptable manner as between the parties and it is acceptable for execution.”

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¹ RESPA is the Real Estate Settlement Procedures Act, a federal Housing and Urban Development consumer protection statute which requires certain disclosures to clients and prohibits kickbacks that tend to increase settlement services costs to homebuyers.

