



ties, in particular their actual costs. According to the court, "[s]uch disclosures were inimical to a plan defendants had formed to market settlement annuities as a way for liability carriers to settle injury claims below their cash settlement value." Thus, defendants allegedly coerced and induced suppliers of annuities to stop doing business with plaintiff; as a result, plaintiff's business was destroyed.

Weil brought suit against the insurers, asserting (among other things) statutory claims under the UIPA, the Cartwright Act, and the UCA. The trial court sustained defendants' demurrers on the Cartwright Act claims, but concluded that Weil had stated claims under the UIPA and the UCA. Defendants appealed.

The primary issue on appeal was the insurers' contention that the UIPA, which prohibits acts of "boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance," supplants the Cartwright Act and the UCA "so as to provide the sole basis by which unlawful conduct of the type alleged here may be subjected to legal restraint or may otherwise produce legal consequences." The court noted that the UIPA itself "expresses an affirmative intention and expectation that it will preserve intact existing remedies for insurance industry misconduct," and observed that "[i]f the legislature wished to exempt the insurance industry from the Cartwright Act, it knew full well how to do so." Additionally, the court "observe[d] a certain illogic in referring to the UIPA as providing an 'exclusive remedy' when...it provides no private remedy at all [under *Moradi-Shalal v. Fireman's Fund Insurance Companies*, 46 Cal. 3d 287 (1988)]. Nor does it empower the Commissioner to redress private injuries." Further, the First District found that violations of the Cartwright Act may constitute the predicate acts for a claim under the UCA. Accordingly, the appellate court ordered the trial court to vacate its prior orders, reinstate the Cartwright Act and UCA claims, and dismiss the UIPA claims.

DEPARTMENT OF REAL ESTATE

Interim Commissioner:

John R. Liberator

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The Real Estate Commissioner is appointed by the Governor and is the chief officer of the Department of Real Estate (DRE). DRE was established pur-

suant to Business and Professions Code section 10000 *et seq.*; its regulations appear in Chapter 6, Title 10 of the California Code of Regulations (CCR). The commissioner's principal duties include determining administrative policy and enforcing the Real Estate Law in a manner which achieves maximum protection for purchasers of real property and those persons dealing with a real estate licensee. The commissioner is assisted by the Real Estate Advisory Commission, which is comprised of six brokers and four public members who serve at the commissioner's pleasure. The Real Estate Advisory Commission must conduct at least four public meetings each year. The commissioner receives additional advice from specialized committees in areas of education and research, mortgage lending, subdivisions and commercial and business brokerage. Various subcommittees also provide advisory input.

DRE primarily regulates two aspects of the real estate industry: licensees (salespersons and brokers) and subdivisions. Pursuant to Business and Professions Code section 10167 *et seq.*, DRE also licenses "prepaid rental listing services" which supply prospective tenants with listings of residential real properties for tenancy under an arrangement where the prospective tenants are required to pay a fee in advance of, or contemporaneously with, the supplying of listings. Certified real estate appraisers are not regulated by DRE, but by the separate Office of Real Estate Appraisers within the Business, Transportation and Housing Agency.

License examinations require a fee of \$30 per salesperson applicant and \$60 per broker applicant. Exam passage rates average 56% for salespersons and 48% for brokers (including retakes). License fees for salespersons and brokers are \$170 and \$215, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales, or leases exceeding one year in length, of any new residential subdivisions consisting of five or more lots or units, DRE protects the public by requiring that a prospective purchaser or tenant be given a copy of the "public report." The public report serves two functions aimed at protecting purchasers (or tenants with leases exceeding one year) of subdivision interests: (1) the report discloses material facts relating to title, encumbrances, and related information; and (2) it ensures adherence to applicable standards for creating, operating, financing, and documenting the project. The commissioner will not issue the public report if the subdivider fails to comply with any provision of the Subdivided Lands Act.

The Department regularly publishes three bulletins. The *Real Estate Bulletin*, which is circulated quarterly as an educational service to all current licensees, contains information on legislative and regulatory changes, commentaries, and advice; in addition, it lists names of licensees who have been disciplined for violating regulations or laws. The *Mortgage Loan Bulletin* is published twice yearly as an educational service to licensees engaged in mortgage lending activities. Finally, the *Subdivision Industry Bulletin* is published annually as an educational service to title companies and persons involved in the building industry.

DRE publishes numerous books, brochures, and videos relating to licensee activities, duties and responsibilities, market information, taxes, financing, and investment information. In July 1992, DRE began offering one-day seminars entitled "How to Operate a Licensed Real Estate Business in Compliance with the Law." This seminar, which costs \$10 per attendee and is offered on various dates in a number of locations throughout the state, covers mortgage loan brokering, trust fund handling, and real estate sales.

The California Association of Realtors (CAR), the trade association joined primarily by agents and brokers working with residential real estate, is the largest such organization in the state. CAR is often the sponsor of legislation affecting DRE. The four public meetings required to be held by the Real Estate Advisory Commission are usually scheduled on the same day and in the same location as CAR meetings.

At this writing, DRE Chief Deputy Commissioner John Liberator continues to serve as Interim Commissioner, following the resignation of former DRE Commissioner Clark Wallace.

MAJOR PROJECTS

DRE Disciplines Two Prepaid Rental Listing Services. In the wake of dozens of consumer complaints and lawsuits, DRE has reprimanded two San Fernando Valley rental listing services; in December, DRE issued desist and refrain orders to Valley Management of Van Nuys and Quality Rentals of Burbank. The main subject of the consumer complaints is alleged misrepresentation by the services regarding their refund policies. The services typically charge up to \$150 for updated lists of properties available for tenancy and, pursuant to Business and Professions Code section 10167.10, are required to refund all but a \$25 service charge if the client does not arrange a tenancy agreement through the listing service. Custom-



ers of both businesses complained that they were not receiving statutory refunds.

However, the desist and refrain orders did not address the refund problems, nor did they address the listing services' alleged use of unapproved form contracts. DRE's order to Valley Management directed that it cease to operate without a license. Valley Management does indeed lack a license, but it is also out of business—having closed in October after refusing refunds to many of its customers. The owners of Valley Management are suspected to have since opened another unlicensed listing service, Sunwest Properties, in Studio City. While DRE issued the citation to the defunct Valley Management, no citation was given to Sunwest, which is still unlicensed and actively engaged in business; DRE officials cited a heavy caseload as the cause for the delays.

The other disciplined service, Quality Rentals, is currently licensed by DRE. However, its owner previously owned Properties Unlimited, a separate unlicensed listing service that closed last summer after being named in about twenty lawsuits. DRE officials admitted that as a result of a history of illegal and unlicensed business practice, the owner should not have been granted a license for the new agency. While DRE officials could not determine a reason why the license was approved, they noted that the owner's previous licensing problem would be disclosed to any prospective consumer who calls DRE at (213) 897-3399.

DRE is expected to continue its investigation into Sunwest's activities.

OAL Approves DRE's Rulemaking Package. On December 7, the Office of Administrative Law (OAL) approved DRE's entire rulemaking package consisting of the proposed adoption of new sections 2717 and 2804, amendments to sections 2785, 2790.1, 2792.8, 2792.21, 2792.23, 3003, 3007, and 3007.6, and the repeal of section 3007.5, Title 10 of the CCR. [14:4 CRLR 132; 14:2&3 CRLR 140-41] Among other things, these changes:

- provide that 3% of the license fees collected by DRE will be credited to the Education and Research Account;
- increase by \$100 the maximum application fee for original and renewal standard and common interest subdivision public reports;
- establish minimum standards for provisions contained in governing instruments for the administration of a homeowners' association's civil claims, for members' assent to actions by the association by ballot vote either at a meeting or without a meeting, and for maintenance or delivery by a developer of specific records and materi-

als to the homeowners' association of a common interest development;

- establish criteria by which the Commissioner may abandon an application for a public report; and
- update references to sections of the Business and Professions Code that have been renumbered.

The new regulations became effective on January 6.

LITIGATION

On November 30, the First District Court of Appeal held that recovery of an unsatisfied judgment against a licensed real estate broker from DRE's Real Estate Recovery Account is permitted even though the judgment is the result of a settlement agreement and stipulation for entry of judgment.

In *Doyle v. Department of Real Estate*, 30 Cal. App. 4th 893, James and Alice Porsche sued Marvin Doyle, a licensed real estate broker, for fraud and deceit arising out of a real estate transaction, claiming \$15,000 in damages; the case went to arbitration, and the Porsches were awarded \$15,000. Doyle filed for a trial de novo, then entered into a settlement agreement under which he was to pay the Porsches \$10,000 within a specified period of time in exchange for the Porsches' release. Pursuant to the agreement, Doyle executed a stipulation for entry of judgment in the amount of \$15,000. The agreement provided that if Doyle failed to pay the \$10,000 within the specified time, the Porsches could file the stipulation and have judgment entered in the action. Doyle failed to make the payment, and the stipulation was filed with the court and judgment entered for \$15,000.

Following unsuccessful attempts to collect on the judgment, the Porsches filed an application with DRE's Recovery Account for payment of the unsatisfied judgment. The DRE Commissioner granted the Porsches' application for recovery of \$15,000. Doyle petitioned for a writ of mandate or prohibition, arguing that payment out of the Recovery Account could not be based on a stipulated judgment. The trial court denied the petition.

In affirming the trial court's decision, the First District explained that DRE maintains a Recovery Account for unsatisfied judgments against licensed real estate brokers based on fraud. If payment is made from the Recovery Account, the broker's license is suspended until the broker reimburses the Recovery Account. The court further stated that Business and Professions Code section 10471, which sets forth the Recovery Account application procedure, was enacted to protect the

public from losses caused by licensed real estate personnel resulting from fraud, and is meant to be construed liberally by the courts to prevent the mischief to which it is directed. The First District rejected Doyle's claim that DRE must deny any section 10471 application that is based on a stipulated judgment, noting that if the legislature had "intended that all applications for payment from the Recovery Account based on a stipulated judgment be denied by the Commissioner, it easily could have included such a requirement in the statutory scheme."

The court also held that the Real Estate Commissioner did not act in excess of his jurisdiction by considering underlying facts in determining whether the stipulated judgment in favor of the Porsches was based on fraud, for purposes of recovery from the Real Estate Recovery Account. The court noted that the Porsches set forth facts underlying their cause of action for fraud in their application to the Commissioner for recovery from the Account; the Commissioner also relied on the facts that the stipulated judgment was for the full amount sought by the Porsches in their complaint against the broker, and that the only cause of action alleged in the complaint was for fraud and deceit. The court concluded that "it is apparent that the Commissioner properly determined that the judgment in this case, though a result of a settlement agreement and stipulation for entry of judgment is 'based on fraud' as required by section 10471."

DEPARTMENT OF SAVINGS AND LOAN

Interim Commissioner:
Keith Paul Bishop
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The Department of Savings and Loan (DSL) is headed by a commissioner who has "general supervision over all associations, savings and loan holding companies, service corporations, and other persons" (Financial Code section 8050). DSL is part of the larger Business, Transportation, and Housing Agency. The Savings and Loan Association Law is in sections 5000 through 10050 of the California Financial Code. Departmental regulations are in Chapter 2, Title 10 of the California Code of Regulations (CCR). The Department, which has been recently downsized by the Wilson administration [13:4 CRLR 128], now consists of four employees regulating only eleven state-chartered savings and loan institutions.