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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

HECTOR IBARRA,  
Plaintiff and Respondent,  
v.  
MOGEEB WEISS,  
Defendant and Appellant.

A132738

(Alameda County  
Super. Ct. No. HG08416228)

Mogeeb Weiss, in propria persona, appeals from a judgment following a court trial awarding respondent Hector Ibarra the sum of \$23,480 as damages on Ibarra's claim for unfair competition in violation of Business and Professions Code section 17200 (section 17200). Weiss raises several issues including that section 17200 does not allow disgorgement of profits obtained through unfair business practices, and that the court erred in finding a violation of section 17200 based on the failure to supervise a real estate agent. We affirm.

**FACTUAL BACKGROUND**

Weiss has not provided a properly supported statement of facts in his opening brief nor has he designated an adequate record. The California Rules of Court require that litigants provide a summary of the significant facts supported by references to the appellate record. (Cal. Rules of Court, rule 8.204 (a)(1)(C); (2)(C); see *Arbaugh v. Procter & Gamble Mfg. Co.* (1978) 80 Cal.App.3d 500, 503, fn. 1 [failure to comply with the Rules of Court requiring summary of material facts supported by appropriate reference to the record may constitute waiver of error].) Weiss's status as a pro per

litigant does not excuse him from the duty to comply with the rules.<sup>1</sup> An appellant in propria persona is held to the same standard of conduct as that of an attorney on appeal. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

Weiss elected not to provide us with any reporter's transcripts and proceeded solely on a partial clerk's transcript.<sup>2</sup> There is thus no record of the bench trial. As far as we can ascertain from the limited record before us, Ibarra brought this action against Weiss, a mortgage broker, and Miromax, Inc.,<sup>3</sup> the company Weiss managed and owned in part.<sup>4</sup> Ibarra alleged numerous causes of action against Weiss and Miromax including negligence, breach of fiduciary duty, fraud, and unfair business practices arising from Miromax's handling of Ibarra's refinance of his home loan. The court found in favor of Ibarra on his section 17200 claim, finding that the conduct of Weiss and Miromax put Ibarra at risk in that they willingly failed to "supervise agents or employ effective protocols to manage the agents' prospects and communications" and that "[t]he willing failure to blindly manage" resulted in them profiting at the expense of Ibarra. The court found Weiss and Miromax jointly and severally liable for \$23,480 which included the loan origination fee, a broker administration fee, and a yield spread premium of \$17,160.<sup>5</sup>

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<sup>1</sup> We note that Weiss is a member of the state bar.

<sup>2</sup> Weiss's designation included only Ibarra's complaint and the first amended complaint, the statement of decision, the register of actions, the notice of appeal and the notice designating the record on appeal.

<sup>3</sup> Miromax defaulted. The judgment against Miromax in favor of Ibarra awarding him damages including punitive damages is not before us.

<sup>4</sup> According to the statement of decision, Weiss admitted that he was the president of Miromax, but that he was not the sole owner of the corporation.

<sup>5</sup> "A yield spread premium (YSP) is a payment made by a lender to a mortgage broker in exchange for that broker's delivering a mortgage ready for closing that is at an interest rate above the par value loan being offered by the lender. The YSP is the difference between the par rate and the actual rate of the loan; this difference is paid to the broker as a form of bonus." (*Bjustrom v. Trust One Mortgage Corp.* (9th Cir. 2003) 322 F.3d 1201, 1204, fn. 2 (citations omitted).)

## DISCUSSION

Weiss contends that the trial court erred in finding an unfair business practices violation under section 17200 and that it improperly awarded the yield spread premium as damages. He, however, has provided this court with no transcript of the trial in which the matter was heard.

It is well settled that a party challenging a judgment has the burden of showing reversible error by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 628, p. 704.) “ ‘It is elementary and fundamental that on a clerk’s transcript appeal the appellate court must conclusively presume that the evidence is ample to sustain the findings, and that the only questions presented are as to the sufficiency of the pleadings and whether the findings support the judgment.’ [Citations.]” (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154, see also, *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416 [if record is inadequate for meaningful review, the appellant defaults and the trial court’s decision should be affirmed].) In the absence of an adequate record here, we must presume that the court’s judgment is correct. On the limited record before us, no error appears.

**DISPOSITION**

The judgment is affirmed.

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RIVERA, J.

We concur:

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RUVOLO, P. J.

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SEPULVEDA, J.\*

\* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.