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Department of Real Estate
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FILED

MAY 23 2012

DEPARTMENT OF REAL ESTATE
BY: C.B.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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To:)	No. H-38154 LA
)	
ALCON REAL ESTATE,)	<u>ORDER TO DESIST</u>
KENNETH A. STEELE, and)	<u>AND REFRAIN</u>
ROBERT GUY MC LELLAN.)	
)	(B&P Code Section 10086)
)	

The Commissioner ("Commissioner") of the California Department of Real Estate ("Department") caused an investigation to be made of the activities of ALCON REAL ESTATE, KENNETH A. STEELE, and ROBERT GUY MC LELLAN. Based on that investigation, the Commissioner has determined that ALCON REAL ESTATE, KENNETH A. STEELE, and ROBERT GUY MC LELLAN have engaged in or are engaging in acts or attempting to engage in the business of, acting in the capacity of, and/or advertising or assuming to act as real estate brokers in the State of California within the meaning of Business and Professions Code Sections 10131(d) (solicit borrowers for or negotiate loans or perform services for borrowers in connection with loans secured by liens on real property), and 10131.2 (engage in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with offering to obtain a loan real property).

In addition, based on that investigation, the Commissioner has determined that

1 ALCON REAL ESTATE, KENNETH A. STEELE, and ROBERT GUY MC LELLAN have
2 engaged in or are engaging in acts or are attempting to engage practices constituting violations of
3 the California Business and Professions Code ("Code") and/or Title 10, California Code of
4 Regulations ("Regulations"). Based on the findings of that investigation, set forth below, the
5 Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and
6 Refrain Order under the authority of Section 10086 of the Code.

7 All further references to ALCON REAL ESTATE include KENNETH A.
8 STEELE and ROBERT GUY MC LELLAN as well as the officers, agents and employees of
9 ALCON REAL ESTATE. KENNETH A. STEELE and ROBERT GUY MC LELLAN engaged
10 in the activities set forth below while doing business as ALCON REAL ESTATE and any other
11 fictitious business names not known at this time.

12 FINDINGS OF FACT

13 1. From February 6, 2003, through January 31, 2012, ROBERT GUY
14 MC LELLAN ("MC LELLAN") was licensed by the Department as a restricted real estate
15 salesperson, license no. 00520763. The Department issued a restricted real estate salesperson
16 license to MC LELLAN in Department Case No. H-29550 LA. On January 3, 2012,
17 MC LELLAN's restricted real estate salesperson license was revoked in Department Case No.
18 H-37153 LA. From March 6, 2009, through August 16, 2009, MC LELLAN was licensed under
19 the employment of broker Dove Capital Corporation, license no. 01316943.

20 2. At no time mentioned herein have KENNETH A. STEELE ("STEELE") or
21 ALCON REAL ESTATE ever been licensed by the Department in any capacity. STEELE owns
22 and is a director of ALCON REAL ESTATE.

23 3. Code Section 10132 defines a real estate salesperson as a person who, for
24 compensation or in expectation of compensation, is employed by a licensed real estate broker to
25 do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and
26 10131.6. Code Section 10131 defines a real estate broker as a person who: (d) solicit borrowers,
27 negotiate loans, collect payments or perform services for borrowers in connection with loans

1 secured directly or collaterally by liens on real property. Code Section 10131.2 defines a real
2 estate broker as a person who engages in the business of claiming, demanding, charging,
3 receiving, collecting or contracting for the collection of an advance fee in connection with any
4 employment undertaken to promote the sale or lease of real property or of a business opportunity
5 by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or
6 a business opportunity, or to obtain a loan or loans thereon.

7 4. On or about May 12, 2009, MC LELLAN solicited and offered to assist
8 borrowers Roy and Peggy B. with loan modification and negotiation services on behalf of
9 ALCON REAL ESTATE. Roy and Peggy B. entered into a written advance fee agreement with
10 ALCON REAL ESTATE for loan modification and negotiation services in connection with a
11 loan secured by a lien on real property. Roy and Peggy B. paid an initial advance fee of \$999.99
12 to ALCON REAL ESTATE. Roy and Peggy B. subsequently received a letter from ALCON
13 REAL ESTATE which contained numerous substantial misrepresentations regarding efforts
14 made by ALCON REAL ESTATE's agents to negotiate a modification with Roy and Peggy B.'s
15 lender. ALCON REAL ESTATE failed to perform the loan modification and negotiation
16 services that had been promised to Roy and Peggy B. ALCON REAL ESTATE and MC
17 LELLAN refused Roy and Peggy B.'s request for a refund of the advance fee paid to ALCON
18 REAL ESTATE.

19 CONCLUSIONS OF LAW

20 5. Based on the information contained in Paragraphs 1 through 4, above,
21 STEELE, MC LELLAN, and ALCON REAL ESTATE violated Code Section 10130 by
22 engaging in activities requiring a real estate license without first obtaining a broker license from
23 the Department.

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