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**FILED**

1 KENNETH C. ESPELL, (SBN 178757)  
2 Real Estate Counsel II  
3 Department of Real Estate  
4 P. O. Box 187007  
5 Sacramento, CA 95818-7007

**August 11, 2011**

DEPARTMENT OF REAL ESTATE

By *L. Jones*

6 Telephone: (916) 227-0789  
7 -or- (916) 227-0868 (Direct)  
8

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 JESSE BONILLA CANALES ) NO. H-2655 FR  
14 and BETTY T. ROMERO, )  
15 Respondents. ) ACCUSATION

16 The Complainant, E. J. HABERER II, in his official capacity as Deputy Real  
17 Estate Commissioner of the State of California, for cause of Accusation against JESSE  
18 BONILLA CANALES (hereinafter "CANALES") and BETTY T. ROMERO (hereinafter  
19 "ROMERO"), (collectively "Respondents") is informed and alleges as follows:

20 THE RESPONDENTS

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23 On or about January 15, 2011, ROMERO's real estate license issued by the  
24 Department of Real Estate (hereinafter "the Department") expired and, to date, has not been  
25 renewed. However, ROMERO is within the two year license renewal grace period and therefore  
26 has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and  
27 Professions Code) (herein "the Code") as a real estate broker. Between February 27, 2004, and

1 2010, ROMERO and CANALES were operating under the fictitious business name American 1st  
2 Mortgage.

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5 At all times relevant herein CANALES was and now is licensed and/or has  
6 license rights under the Code as a real estate broker. At all times until at least December 7, 2010,  
7 CANALES was an Associate-Broker employed by ROMERO. Since at least January 1, 2009,  
8 the date CANALES registered the fictitious business name with the County of Fresno, California,  
9 CANALES held the fictitious business name American 1st Mortgage. However, CANALES did  
10 not register the fictitious business name American 1st Mortgage with the Department until  
11 December 10, 2010.

12 3

13 Whenever reference is made in an allegation in this Accusation to an act or  
14 omission of ROMERO and/or CANALES, such allegation shall be deemed to mean that  
15 ROMERO, CANALES, the employees, agents and/or real estate licensees employed by or  
16 associated with ROMERO and/or CANALES while acting within the course and scope of their  
17 authority and employment with ROMERO and/or CANALES and committed such act or  
18 omission in the furtherance of the real estate business or operations of ROMERO and/or  
19 CANALES.

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21 At all times herein mentioned, ROMERO and/or CANALES engaged in the  
22 business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within  
23 the State of California within the meaning of Section 10131(d) of the Code, including the  
24 operation and conduct of a mortgage loan brokerage with the public wherein, on behalf of others,  
25 for compensation or in expectation of compensation, ROMERO and/or CANALES solicited  
26 borrowers or lenders for or negotiated loans, loan modifications or collected payments or  
27 performed services for borrowers or lenders or note owners in connection with loans secured

1 directly or collaterally by liens on real property or on a business opportunity and for residential  
2 property resale.

3 FIRST CAUSE OF ACTION

4 Audit Violations

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6 Complainant incorporates each and every allegation contained in Paragraphs 1  
7 through 4, above, as if more fully set forth herein.

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9 Intermittently between May 5, 2009, and May 29, 2009, the field work for an  
10 audit was conducted at ROMERO's main office located 4241 E. Clinton, Fresno, California  
11 93703 and at the Fresno District Office of the Department of Real Estate, Fresno, California  
12 wherein the Department's auditor examined ROMERO's records for the period April 1, 2006 to  
13 March 31, 2009 (the audit period).

14

15 In so acting as a real estate brokers, Respondents accepted or received funds in  
16 trust (herein "trust funds") from or on behalf of lenders, investors, borrowers and others in  
17 connection with the mortgage loan brokerage activities, loan servicing, in-house escrow services  
18 and resale activities described in Paragraph 4, above, and thereafter from time to time made  
19 disbursements of the trust funds.

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21 The aforementioned trust funds accepted or received by Respondents were  
22 deposited or caused to be deposited by Respondents into one or more bank accounts (herein  
23 "trust fund accounts") maintained by Respondents for the handling of business funds. However,  
24 Respondents did not maintain a trust account where Respondents deposited or caused to be  
25 deposited client funds received in trust.

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27 In the course of the activities described in Paragraph 5, above, for the audit period  
ROMERO and/or CANALES:

1 (a) For the times relevant to the operation of American 1<sup>st</sup> Mortgage by  
2 ROMERO, ROMERO failed to designate a bank account as a trust account under the name of  
3 ROMERO as trustee in violation of Section 10145 and 10146 of the Code and Section 2832,  
4 Chapter 6, Title 10, California Code of Regulations (hereinafter "the Commissioner's  
5 Regulations");

6 (b) For the times relevant to the operation of American 1<sup>st</sup> Mortgage by  
7 CANALES, CANALES failed to designate a bank account as a trust account under the name of  
8 CANALES as trustee in violation of Section 10145 and 10146 of the Code and Section 2832 of  
9 the Commissioner's Regulations;

10 (c) Respondents represented clients to modify the client's mortgage loan  
11 obligations and/or provide mortgage loan forbearance services, including, but not limited to,  
12 those clients listed in Paragraph "(d)", below, wherein the clients agreed to pay Respondents and  
13 did pay Respondents an advanced fee for services to be performed, each in violation of Sections  
14 10085.6, 10130 and 10139 of the Code;

15 (d) Respondents failed to deposit advance fees received by CANALES from  
16 the clients into a trust account advance fees including, but not limited to, the clients listed below  
17 all in violation of Section 10234 of the Code:

18

<u>Client</u>	<u>Date Received</u>	<u>Amount Received</u>
Jesus De Leon	08/21/2008	\$1,000.00
Jesus De Leon	09/30/2008	\$ 250.00
Guillermina Herrera	05/28/2009	\$2,500.00
Manuel Rodriguez, Jr.	06/28/2010	\$1,000.00
Manuel Rodriguez, Jr.	07/28/2010	\$1,000.00
Manuel Rodriguez, Jr.	09/08/2010	\$1,500.00

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24 (e) Respondents failed to submit to the Department materials used in  
25 connection with the loan modification services as described in Paragraph 3, above, including, but  
26 not limited to, all forms of advance fee contracts, letters, cards, flyers, advertisement copy and/or  
27 other forms of communications used to solicit prospective clients so that the Department could

1 review the materials and determine if the materials tend to mislead prospective clients so that if  
2 the materials met the Department's requirements a *no-objection letter* could be issued or reject  
3 the materials for failure to comply with the Department's requirements. Respondent's failure to  
4 provide the materials to the Department at least ten (10) days prior to use violates Section 10085  
5 of the Code and Section 2970 of the Commissioner's Regulations;

6 (f) On October 11, 2009, then Governor Schwarznegger signed Senate Bill  
7 94 (Calderon), which took effect immediately upon Governor Schwarznegger's signature and  
8 was codified in Section 10085.6 of the Code. Section 10085.6 of the Code provides that the  
9 collection of advance fees for loan modifications was unlawful and a public offense punishable  
10 by a fine of not more than \$10,000, by imprisonment in the county jail for a term not to exceed  
11 six months, or both. In 2010, in violation of Section 10085.6 of the Code, Respondents collected  
12 a total of \$3,500.00 in advance fees from Manuel Rodriguez, Jr. (identified in Paragraph  
13 "(d)" above) to perform loan modification services;

14 (g) Respondents failed to provide an accounting to trust fund owner-  
15 beneficiaries from whom advance fees had previously been collected in compliance with  
16 Section 10146 of the Code and Section 2972 of the Regulations;

17 (h) Respondents failed to provide accurate mortgage disclosure statements to  
18 at least the four (4) borrowers listed below in violation of sections 10240 and 10241 of the  
19 Code:

Borrower	Address	Per GFE Pd to Respondents	Per GFE Pd to Others	Paid By Escrow Company	Check Number
Zapeda	4668 E. Turner Ave. Fresno, CA	\$3,102.00 (YSP)	\$4,090.50	\$5,392.50	606266
Flores- Bravo	14016 Hume Ave. Aroma, CA	\$1,550.00 (YSP)	\$5,345.99	\$6,876.99	621199
Perez	2211 W. Pico Fresno, CA	\$150.00 (YSP)	\$4,641.72	\$4,791.72	645735
Gazsilazo	316 11 <sup>th</sup> St. Orange Cove, CA	\$1,375.00 (YSP)	\$3,025.00	\$4,400.00	674272

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The acts and/or omissions of Respondents as alleged above violated Sections 10085; 10085.6; 10130; 10139; 10246; 10146; 10234; 10240; 10241 of the Code; and Sections 2832; 2970; 2972 of the Commissioner's Regulations each of which jointly and severally constitutes grounds for discipline of Respondents, and each of them, under Section 10177(d) of the Code.

SECOND CAUSE OF ACTION

Failure to Supervise

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Each and every allegation in Paragraphs 1 through 10, inclusive, above, is incorporated by this reference as if fully set forth herein.

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At all times relevant herein ROMERO and/or CANALES were required to exercise reasonable supervision and control over the activities her, agents, real estate licensees and employees. ROMERO and/or CANALES failed to exercise reasonable supervision in such a manner as to allow the acts and omissions as described above to occur; all in violation of Section 10159.2 of the Code and which constitutes cause for suspension or revocation of all licenses and license rights of Respondent ROMERO and CANALES under Section 10177(d) and 10177(h) of the Code.

THIRD CAUSE OF ACTION

Negligence and/or Incompetence

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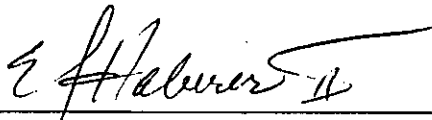
Each and every allegation in Paragraphs 1 through 12, inclusive, above are incorporated by this reference as if fully set forth herein.

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The acts and omissions of ROMERO and/or CANALES described above, constitute negligence or incompetence in performing acts requiring a real estate license, and is

1 cause for suspension or revocation of all licenses and license rights of ROMERO and  
2 CANALES, all in violation of Section 10177(g) of the Code and which constitutes cause for  
3 suspension or revocation of all licenses and license rights of Respondents ROMERO and  
4 CANALES under Section 10177(d) of the Code.

5 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
6 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary  
7 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of  
8 Division 4 of the Business and Professions Code) and for such other and further relief as may  
9 be proper under other applicable provisions of law.

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13 E. J. HABERER II,  
Deputy Real Estate Commissioner

14 Dated at Oakland, California

15 this 8 day of August, 2011.

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17 **DISCOVERY DEMAND:**

18 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedures Act*, the Department  
19 of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in  
20 the *Administrative Procedures Act*. Failure to provide Discovery to the Department of Real  
21 Estate may result in the exclusion of witnesses and documents at the hearing or other  
22 sanctions that the Office of Administrative Hearings deems appropriate.