

**FILED**

JUN 11 2014

BUREAU OF REAL ESTATE

By choime

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8 BEFORE THE  
9 BUREAU OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 THOMAS KENNETH MOULDING, ) NO. H-02890 FR  
14 Respondent. ) ACCUSATION  
15 )

16 The Complainant, Brenda Smith, in her official capacity as a Deputy Real Estate  
17 Commissioner of the State of California ("Complainant") for Accusation against THOMAS  
18 KENNETH MOULDING ("Respondent"), individually and doing business as "Flat Rate  
19 Realty" and "Featured Real Estate", is informed and alleges as follows:

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21 Respondent is presently licensed and/or has license rights under the Real Estate  
22 Law, Part 1 of Division 4 of the Business and Professions Code ("the Code") as a real estate  
23 broker.

24 2

25 Respondent, while doing business as Flat Rate Realty, operated the internet site  
26 Flatraterealtyinc.com. That website offered Respondent's "Premier Rebate Plan", in which  
27 Respondent offered a 50% commission rebate to any home buyer who did not need Respondent's

1 help finding a home to buy. Respondent's role in the purchase process would be solely to  
2 prepare the offer and negotiate the purchase with the seller.

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4 Prior to June 13, 2012, Jose B. contacted Respondent about the Premier Rebate  
5 Plan after viewing the Flatraterealtyinc.com website. During that conversation, Respondent  
6 confirmed to Jose B. that Jose B. was eligible for the Premier Rebate Plan. No written agreement  
7 was ever entered into between Jose B. and Respondent setting out the terms of the rebate  
8 program or the specific services Respondent would perform for Jose B.

9 4

10 On or about June 13, 2012, Jose B. found a house to purchase located at 718  
11 Manzanita, Sunnyvale, California. Respondent prepared a purchase offer for the Manzanita  
12 property on behalf of Jose B. Thereafter, Jose B.'s \$399,950.00 purchase offer was accepted by  
13 the buyer. Respondent failed to provide all parties to the transaction a written disclosure of the  
14 commission rebate.

15 5

16 As part of the purchase process, Respondent failed to conduct a competent and  
17 diligent visual inspection of the Manzanita property.

18 6

19 On or about July 31, 2012, the sale of the Manzanita property to Jose B. closed  
20 and Respondent received a commission of \$9,998.75.

21 7

22 On or after July 31, 2012, Jose B. received a \$3,999.50 payment from Respondent  
23 representing Jose B.'s commission rebate. However, that amount represented only 40% of  
24 Respondent's commission for the Manzanita property transaction instead of the 50% rebate that  
25 Respondent promised to Jose B., resulting in a shortage of \$999.88 of the \$4999.38 Jose B.  
26 should have been paid under the terms of Respondent's Premier Rebate Plan. Respondent  
27 rejected Jose B.'s request for payment of the remaining \$999.88.

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The acts and/or omissions of Respondent described in Paragraphs 2 through 7, above, are grounds for the revocation or suspension of Respondent's license and/or license rights under Sections 10176(a) (substantial misrepresentation), 10176(g) (written compensation agreement requirement), 10177(d) (willful disregard of Real Estate Law) and/or 10177(g) (negligence/incompetence), and 10176(i) (fraud or dishonest dealing) of the Code, and Section 2079 (competent and diligent visual inspection requirement) of the California Civil Code.

COST RECOVERY

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the Administrative Law Judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Code, for the reasonable cost of investigation and prosecution of this case, including agency attorney's fees, and for such other and further relief as may be proper under other provisions of law.

  
BREND A SMITH  
Deputy Real Estate Commissioner

Dated at Fresno, California,  
this 6 day of June, 2014.