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FILED

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DEPARTMENT OF REAL ESTATE



8  
9 BEFORE THE  
10 DEPARTMENT OF REAL ESTATE  
11 STATE OF CALIFORNIA

12 \* \* \*

13 In the Matter of the Accusation of	)	NO. H-4178 SD
	)	
14 LARSON-BERTONE INC. and	)	<u>ACCUSATION</u>
15 JAMES SCOTT BERTONE,	)	
	)	
16 Respondents.	)	
	)	

17 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy Real  
18 Estate Commissioner of the State of California, for cause of Accusation against LARSON-  
19 BERTONE INC.; (hereinafter "LBI"), and JAMES SCOTT BERTONE (hereinafter "BERTONE")  
20 (collectively referred to herein as "Respondents") is informed and alleges as follows:  
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23 LBI is presently licensed by the Department of Real Estate (hereinafter "the  
24 Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the  
25 Business and Professions Code (hereafter "the Code"), as a corporate real estate broker, and at all  
26 times relevant herein was acting by and through BERTONE as its designated officer broker.  
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2 At all times relevant herein, LBI had the following fictitious business names  
3 registered with the Department: "American Mitigation Group," "CalvetLoans.US," "First Equity  
4 Direct" and "JDP Mortgage."

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7 BERTONE is presently licensed by the Department and/or has license rights under  
8 the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker.

9 4

10 At all times relevant herein, BERTONE was licensed by the Department as the  
11 designated officer broker of LBI. As the designated officer broker, BERTONE was responsible,  
12 pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents,  
13 real estate licensees and employees of LBI for which a real estate license is required.

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

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23 At all times herein mentioned, LBI engaged in activities on behalf of others within  
24 the State of California for or in expectation of compensation, for which a real estate license is  
25 required under:  
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- 1 (a) Section 10131(d) of the Code, including the solicitation of borrowers or lenders for  
2 or negotiation of loans or collection of payments or performance of services for  
3 borrowers or lenders or note owners in connection with loans secured directly or  
4 collaterally by liens on real property or on a business opportunity; and  
5 (b) Section 10131.2 of the Code, including the claiming, demanding, charging,  
6 receiving, collecting or contracting for the collection of an advance fee in connection  
7 with any employment undertaken to promote the sale or lease of real property or of a  
8 business opportunity by advance fee listing, advertisement or other offering to sell,  
9 lease, exchange or rent property or a business opportunity, or to obtain a loan or  
10 loans thereon.  
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12 FIRST CAUSE OF ACTION

13 Audit Violations  
14 As Against LBI

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16 Each and every allegation in Paragraphs 1 through 6, inclusive, above, is  
17 incorporated by this reference as if fully set forth herein.

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19 Beginning on or about August 6, 2009, and continuing intermittently until November  
20 18, 2009, an audit was conducted at LBI's office located at 1150 Camino Del Mar, Suite E, Del  
21 Mar, California, and the Department of Real Estate's office located at 1350 Front Street, San Diego,  
22 California, wherein the Auditor examined LBI's records for the period of June 1, 2008 through July  
23 31, 2009 (hereinafter "the audit period").  
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26 While acting as a corporate real estate broker as described in Paragraph 6, above, and  
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1 within the audit period, LBI accepted or received funds in trust (hereinafter "trust funds") from or  
2 on behalf of borrowers, lenders, and/or others in connection with loans secured directly or  
3 collaterally by liens on real property or on a business opportunity, for or in expectation of  
4 compensation, as alleged herein, and thereafter from time-to-time made disbursements of said trust  
5 funds.

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8 In connection with the operation and conduct of the activities described in Paragraph  
9 6, above, and within the audit period, LBI engaged in the business of claiming, demanding,  
10 charging, receiving, collecting or contracting for the collection of advanced fees within the meaning  
11 of Sections 10026 and 10131.2 (hereinafter "advanced fee") of the Code, including but not limited  
12 to the following transaction:

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Homeowner	DATE	AMOUNT
C. Pineda	10/31/2008	\$2,084

14  
15

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17 The trust funds and advanced fees accepted or received by LBI as described in  
18 Paragraphs 9 and 10, above, were deposited or caused to be deposited by LBI into two bank  
19 accounts maintained by LBI for the handling of trust funds, advanced fees and general business  
20 funds, and thereafter from time-to-time LBI made disbursements of said trust funds, identified as  
21 follows:  
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23

BANK ACCOUNT # 1	
Bank Name and Location:	First Republic Bank, 1110 Camino Del Mar, Del Mar, California 92014
Account No.:	XXXXXXXX3030
Entitled:	"Larson-Bertone Inc DBA American Mitigation Group"
Signatories:	James Scott Bertone (REB/D.O.) and Kathy Larson (REB)
No. of Signatures Required:	One

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**BANK ACCOUNT # 2**

Bank Name and Location:	First Republic Bank, 1110 Camino Del Mar, Del Mar, California 92014
Account No.:	XXXXXXXX3402
Entitled:	"American Mitigation Group Inc"
Signatories:	James Scott Bertone (REB/D.O.) and Kathy Larson (REB)
No. of Signatures Required:	One

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In the course of the activities described in Paragraph 6, above, and within the audit period, LBI:

- (a) failed to properly designate Bank Account #1 and Bank Account #2 as a trust account in the name of LBI or its registered fictitious business name, as trustee, in violation of Section 10145 of the Code and Section 2832 of the Regulations;
- (b) failed to maintain records of all trust funds received and disbursed, including but not limited to information identifying from whom trust funds were received, for Bank Account #1 and Bank Account #2, in violation of Section 10145 of the Code and Section 2831 of the Regulations;
- (c) failed to maintain separate records for each beneficiary of funds held in Bank Account #1 and Bank Account #2, in violation of Section 10145 of the Code and Section 2831.1 of the Regulations;
- (d) failed to reconcile the total of separate beneficiary/property records with a control record on a monthly basis for Bank Account #1 and Bank Account #2, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;

1 (e) failed to cause the advance fee agreement LBI used between June 1, 2008 and  
2 June 30, 2009 and all materials used in obtaining the advance fee agreement  
3 to be submitted to the Department of Real Estate prior to use, as required by  
4 Section 10085 of the Code and Section 2970 of the Regulations;

5 (f) collected advance fees from principals for providing loan modification  
6 services, (referred to by Respondents as "Mitigation Services"), and collected  
7 trust funds from principals for providing loan brokerage services, and did not  
8 maintain and provide an accounting to those principals showing the services  
9 rendered, identification of the trust account into which the funds were  
10 deposited and details of how those funds were disbursed, in violation of  
11 Section 10146 of the Code and 2972 of the Regulations;

12 (g) collected advance fees from principals for providing loan modification  
13 services, and trust funds from principals for providing loan brokerage  
14 services, and deposited those funds into Bank Account #1 and Bank Account  
15 #2, instead of immediately depositing said funds into a designated trust  
16 account or neutral escrow depository, in violation of Section 10146 of the  
17 Code;

18 (h) collected advance fees from principals for providing loan modification  
19 services, and trust funds from principals for providing loan brokerage  
20 services, and deposited those funds into Bank Account #1 and Bank Account  
21 #2, and commingled said funds with LBI's general business funds, in  
22 violation of Sections 10145 and 10176(e) of the Code and Section 2835 of  
23 the Regulations;  
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1 (i) Failed to provide and/or provided incomplete and/or inaccurate Mortgage  
 2 Loan Disclosure Statements (MLDS) to borrowers containing all of the  
 3 information required by Section 10241 of the Code, in violation of Section  
 4 10240(a) of the Code, including, but not limited to the following:

5 i. MLDS were not signed or dated by LBI, its agents or  
 6 employees, or were not signed or dated by the borrower within  
 7 three (3) days of a completed loan application or before the  
 8 borrower became obligated to the loan, for example:  
 9

Borrower Name	Date of Initial Loan Application	Date Signed by D.O./Agent	Date Signed by Borrower
Finnegan	4/17/09	Not signed/dated	4/17/09
Esquibel	4/16/09	Not signed/dated	4/16/09
Loomis	Not dated	12/22/08	5/13/09
Clark	3/31/09	Not signed/dated	3/31/09
Guerrero	1/14/09	1/14/09	4/15/09
Alch	3/30/09	3/30/09	4/21/09
Tamayo	1/13/09	1/13/09	3/5/09
Cruz	9/9/08	9/11/08	10/7/08

17 ii. MLDS forms indicated that no yield spread premiums (YSP)  
 18 were to be received by LBI, however, YSP was paid to LBI for  
 19 two of eight loan files examined by the auditor:  
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Borrower Name	YSP per HUD Settlement Statement
Finnegan	\$1,069.75 (paid to lender per HUD, but check payable to LBI)
Clark	\$2,337.50

23  
 24 iii. Initial MLDS forms for borrowers Guerrero, Alch, Tamayo  
 25 and Cruz (as identified above), indicated no YSP to be  
 26 received by LBI, however a revised MLDS form was  
 27 completed to show the YSP;





1 10159.2 (Reasonable Supervision by Designated Officer) of the Code and Section 2725 of the  
2 Regulations (Reasonable Supervision by Broker).

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4 BERTONE failed to exercise reasonable supervision over the acts and/or omissions  
5 of LBI and its employees in such a manner as to allow the acts and/or omissions as described in  
6 Paragraph 12, above, to occur, which constitutes cause for the suspension or revocation of the  
7 licenses and license rights of BERTONE under Section 10177(d) (Willful Disregard/Violation of  
8 Real Estate Law) and/or Section 10177(g) (Negligence/Incompetence in Performing Act Requiring  
9 License) of the Code, and Section 10177(h) (Failure to Exercise Reasonable Supervision) and  
10 Section 10159.2 (Reasonable Supervision by Designated Officer) of the Code.  
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12 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of  
13 this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action  
14 against all licenses and license rights of all Respondents named herein under the Real Estate Law  
15 (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as  
16 may be proper under other provisions of law.  
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20 TRICIA D. SOMMERS  
21 Deputy Real Estate Commissioner

22 Dated at Sacramento, California

23 this 28<sup>th</sup> day of March, 2011.  
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