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October 22, 2013

BUREAU OF REAL ESTATE



By _____

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

11 * * *

12 In the Matter of the Accusation of)
13) NO. H-6028 SAC
14 SN SERVICING CORPORATION)
15 and CECILIA MATTANA-SMULLIN,) ACCUSATION
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_____ Respondents.)

17 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
18 of the State of California, for Accusation against Respondent SN SERVICING
19 CORPORATION (SNSC) and CECILIA MATTANA-SMULLIN (MATTANA) (Collectively
20 "Respondents"), is informed and alleges as follows:

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22 The Complainant makes this Accusation against Respondents in her official
23 capacity.

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25 MATTANA is presently licensed and/or has license rights under the Real Estate
26 Law, Part 1 of Division 4 of the California Business and Professions Code (the Code) as a real
27 estate broker.

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SNSC is presently licensed by the Bureau of Real Estate (the Bureau) as a corporate real estate broker.

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At all times herein mentioned until January 16, 2013, MATTANA was licensed by the Bureau as the designated broker/officer of SNSC. As the designated broker/officer, MATTANA was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of SNSC for which a real estate license is required.

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At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a loan brokerage business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents solicited lenders and borrowers for loans secured directly or collaterally by liens on real property, and wherein Respondents arranged negotiated, processed, and consummated such loans.

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

FIRST CAUSE OF ACTION

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Beginning October 23, 2012, and continuing intermittently through March 13, 2013, an audit was conducted of SNSC's loan servicing business at its main office located at

1 323 Fifth Street, Eureka, California, and at the Oakland District Office of the Bureau located at
2 1515 Clay Street, Suite 702, Oakland, California, where the auditor examined records for the
3 period of July 1, 2011 through October 31, 2012 (the audit period).

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5 While acting as a real estate broker as described in Paragraph 5, above, and
6 within the audit period, SNSC accepted or received funds in trust (trust funds) from or on behalf
7 of lenders, investors, borrowers and others in connection with mortgage loan brokerage
8 activities, deposited or caused to be deposited those funds into a number of bank accounts
9 maintained by SNSC as follows:

10 Wells Fargo Bank, P. O. Box 63020, San Francisco, CA 94163:

- 11 a) Account No. XXXXXX3540, entitled "SN Servicing Corporation for
12 Various Investors and Mortgagors" (Trust Account #1);
13 b) Account No. XXXXXX3573, entitled "SN Servicing Corporation-Master
14 Lockbox Account in Trust for Others" (Trust Account #2)

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16 In the course of the activities described in Paragraph 5, in connection with the
17 collection and disbursement of trust funds, the audit revealed that:

- 18 (a) When an accountability was performed on Trust Account #1, as of
19 September 30, 2012, there was a shortage of \$1,556,894.47. The shortage
20 was caused by two (2) unexplained transfers of \$775,000.00 on
21 September 24, 2012, and an unidentified cause of \$5,404.49. On October
22 11, 2012, this shortage was partially cured by the transfer of
23 \$1,550,000.00 from Trust Account #2 into Trust Account #1. As of
24 October 31, 2012, there was a shortage of \$1,340,831.14 in Trust
25 Account #1. The shortage was caused by an unexplained withdrawal of
26 \$1,300,000.00 on October 25, 2012, and an unexplained shortage of
27 \$40,831.14. On November 6, 2012, this shortage was partially cured by

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the transfer of \$1,300,000.00 from Trust Account #2 into Trust Account #1. These shortages are in violation of Section 10145 (a) (1) of the Code;

(b) Respondent allowed trust funds of multiple beneficiaries to be deposited into non FDIC insured interest bearing accounts, and allowed the interest to inure to it's benefit in violation of Section 10145(d) of the Code;

(c) Respondent failed to maintain a Record of All Trust Funds Received and Disbursed for Trust Account #1 as required by Section 2831 of the Regulations; and,

(d) Respondent failed to maintain separate beneficiary records for each beneficiary or transaction for Trust Account #1, as required by Section 28321.1 of the Regulations.

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The acts and/or omissions of SNSC as alleged above violate Sections 2831 (Control Records) and 2831.1 (Separate Beneficiary Records) of the Regulations and Sections 10145 (a) (1) (Trust Funds Fund Handling) and 10145(d) (Interest Bearing Accounts) of the Code and are grounds for discipline under Section 10177(d) (Willfully Disregard or Violate Real Estate Law) and 10177(g) (Negligence or Incompetence by Real Estate Licensee) of the Code.

SECOND CAUSE OF ACTION

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Complainant refers to Paragraphs 1 though 10, above, and incorporates them herein by reference.

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At all times herein above mentioned, MATTANA was responsible, as the designated broker officer of SNSC, for the supervision and control of the activities conducted on behalf of SNSC by its officers and employees. MATTANA failed to exercise reasonable supervision and control over the property mortgage loan brokering activities of SNSC. In

1 particular, MATTANA permitted, ratified and/or caused the conduct described in the First
2 Cause of Action, above, to occur, and failed to take reasonable steps, including, but not limited
3 to, the handling of trust funds, supervision of employees, and the implementation of policies,
4 rules, procedures, and systems to ensure the compliance of the corporation with the Real Estate
5 Law and the Regulations.

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7 The above acts and/or omissions of MATTANA violate Section 10159.2
8 (Designated Officer) of the Code and Section 2725 (Broker Supervision) of the Regulations and
9 constitute grounds for disciplinary action under Sections 10177 (d), 10177 (g) and 10177(h)
10 (Failure to Supervise) of the Code.

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12 Section 10106 of the Code provides, in pertinent part, that in any order issued
13 in resolution of a disciplinary proceeding before the department, the commissioner may request
14 the administrative law judge to direct a licensee found to have committed a violation of this part
15 to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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

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TRICIA D. SOMMERS
Deputy Real Estate Commissioner

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Dated at Sacramento, California,
this 16th day of October, 2013.