

FILED

FEB 11 2011

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

OF LENDING GROUP INC., AND
WILLIAM RICHARD HOGARTY,

Respondents.

No. H-11008 SF

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSES

On October 1, 2010, an Accusation was filed in this matter against the above-entitled Respondents.

On December 16, 2010, Respondents OF LENDING GROUP INC. and WILLIAM RICHARD HOGARTY petitioned the Commissioner to voluntarily surrender their real estate broker corporation license and real estate broker license, respectively, pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that the petition of Respondents OF LENDING GROUP INC. and WILLIAM RICHARD HOGARTY to voluntarily surrender their real estate broker corporation license and real estate broker license, respectively, is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in the Declaration executed by Respondents OF LENDING GROUP INC. and WILLIAM RICHARD HOGARTY on December 16, 2010 (attached as Exhibit "A" hereto).

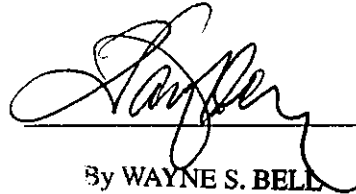
1 Respondents OF LENDING GROUP INC. and WILLIAM RICHARD
2 HOGARTY's license certificates and pocket cards shall be sent to the below listed address so
3 that they reach the Department on or before the effective date of this Order:

4 DEPARTMENT OF REAL ESTATE
5 Attn: Licensing Flag Section
6 P. O. Box 187000
7 Sacramento, CA 95818-7000

8 This Order shall become effective immediately.

9 DATED: 2/10/2011

10 JEFF DAVI
11 Real Estate Commissioner

12 
13 _____
14 By WAYNE S. BELL
15 Chief Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

No. H-11008 SF

OF LENDING GROUP INC., and WILLIAM
RICHARD HOGARTY

Respondents.

DECLARATION

My name is WILLIAM RICHARD HOGARTY. I am currently licensed as a real estate broker and/or have license rights with respect to said license. OF LENDING GROUP INC. is licensed as a corporate real estate broker and/or has license rights with respect to said license. I am the officer - broker of OF LENDING GROUP INC. designated pursuant to Section 10211 of the Code, and I am authorized to sign this declaration on behalf of OF LENDING GROUP INC. I am represented by Jacqueline C. Fagerlin in this matter, and am acting on behalf of OF LENDING GROUP INC.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code) I wish to voluntarily surrender the real estate license(s) issued by the Department of Real Estate



1 (Department) to OF LENDING GROUP INC. and to me, pursuant to Business and Professions
2 Code Section 10100.2.

3 It is understood that by so voluntarily surrendering these license(s), I may be
4 relicensed as a broker or as a salesperson and OF LENDING GROUP INC. may be relicensed as
5 a broker corporation only by petitioning for reinstatement pursuant to Section 11522 of the
6 Government Code. I also understand that by so voluntarily surrendering said license(s), both OF
7 LENDING GROUP INC. and I agree to the following:

8 The filing of this Declaration shall be deemed as the petition of OF LENDING
9 GROUP INC. and also as my petition for voluntary surrender. It shall also be deemed to be an
10 understanding and agreement by both OF LENDING GROUP INC. and me that we hereby waive
11 all rights either of us may have to require the Commissioner to prove the allegations contained in
12 the Accusation filed in this matter at a hearing held in accordance with the provisions of the
13 Administrative Procedure Act (Government Code Sections 11400 et seq.), and that OF
14 LENDING GROUP INC. and I also waive other rights afforded to us in connection with the
15 hearing such as the right to discovery, the right to present evidence in defense of the allegations
16 in the Accusation and the right to cross-examine witnesses. We further agree that upon
17 acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all
18 relevant evidence obtained by the Department in these matters prior to the Commissioner's
19 acceptance, and all allegations contained in the Accusations heretofore filed in the Department
20 Case No. H-11008 SF, may be considered by the Department to be true and correct for the
21 purpose of deciding whether to grant relicensure or reinstatement pursuant to Government Code
22 Section 11522.

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I declare under penalty of perjury under the laws of the State of California that the
above is true and correct and that OF LENDING GROUP INC. and I freely and voluntarily
surrender all our license(s) and license rights under the Real Estate Law.

12/16/10
Date and Place

WRH
WILLIAM RICHARD HOGARTY

12/16/10
Date and Place

WRH
WILLIAM RICHARD HOGARTY for
OF LENDING GROUP INC.

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007

6 Telephone: (916) 227-0789
7 (916) 227-0781 (Direct)

FILED

OCT - 1 2010

DEPARTMENT OF REAL ESTATE

By L. Zin

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 OF LENDING GROUP INC., and)
14 WILLIAM RICHARD HOGARTY)
15 Respondents.)

No. H-11008 SF
ACCUSATION

16 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the
17 State of California, for cause of Accusation against OF LENDING GROUP INC., and
18 WILLIAM RICHARD HOGARTY, (hereinafter "Respondents"), are informed and alleges as
19 follows:

20 PRELIMINARY ALLEGATIONS

21 1

22 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the
23 State of California, makes this Accusation in his official capacity.

24 2

25 Respondents are presently licensed and/or have license rights under the Real
26 Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "the Code").

27 ///

3

At all times mentioned, Respondent OF LENDING GROUP INC., (hereinafter "OLG") was and is licensed by the State of California Department of Real Estate (hereinafter "Department") as a real estate broker corporation.

4

At all times mentioned, Respondent WILLIAM RICHARD HOGARTY, (hereinafter "HOGARTY") was and is licensed by the Department individually as a real estate broker, and as the designated broker officer of OLG. As said designated officer-broker, HOGARTY 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 OLG for which a license is required.

5

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

6

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein you, for or in expectation of compensation, for another or others, solicited borrowers or lenders or negotiated loans or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

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FIRST CAUSE OF ACTION

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

8

In connection with the operation and conduct of the activities described in Paragraphs 6, OLG engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees within the meaning of Sections 10026 and 10131.2 (hereinafter "advance fee") of the Code including but not limited to the following:

HOMEOWNER	Property Address	DATE	AMOUNT
Martin and Sandra G.	25059 Oakridge Ct., Hayward	5/16/09 and 7/16/09	\$8,000
Peter and Kathy S.	17590 Grey Fawn Trail, Lakehead	6/8/09	\$16,500
Robert and Nachet H.	7979 Koa Wood Ct, Corona	6/1/09	\$15,500
Paul M.	806 Cortez Ct., Livermore	6/2/09	\$5,500
Richard R.	1382 Ukiah Way, Upland	5/31/09	\$6,500
Shawn and Angelique R.	5425 Demarcus Blvd. #204	7/13/09	\$4,000
Oscar and Martha G.	2448 Dolan Way, San Pablo	7/30/09	\$6,000
Allan and Karen T.	42 North Boyle Heights Ct., Tracy	9/14/09	\$2,000
Michael and Regina L.	2912 W. Castle Pines Trce., Dublin	10/20/09	\$3,850
Christopher and Shelia M.	1457 Pinegrove Way, Brentwood	11/11/09	\$6,000
Werener and Katheryn H.	1068 Central Blvd., Hayward	1/25/10	\$8,400
Brian J.	5450 Concord Blvd., Concord	2/8/10 and 2/12/10	\$8,000
James and A. Hawley	7966 Koa Wood Ct., Corona	3/24/10	\$10,200
Janice N.	431 Russell Street, Vallejo	1/18/09	\$8,000
Mike and Mary D.	189 Lost Oak Ct., Roseville	2/16/10	\$10,200
Patrick and Tafoya R.	224 Morningside Ct., Tracy	4/12/10	\$5,000
Francisco and Elizabeth G.	7930 Wells Avenue, Newark	5/10/10	\$5,129.79
Duane and Diana J.	136 Danica Ct., Brentwood	9/28/09	\$8,000
Michael and Sheila N.	3906 Killdeer Dr., Antioch	10/9/09	\$6,000
Theresa and Mark D.	5697 Starfish Court, Byron	9/17/09	\$10,000
Craig L.	8985 Alcosta Blvd., #162, San Ramon	1/18/10, 1/26/10, 2/8/10, and 3/22/10	\$5,000

In connection with the collection and handling of said advance fee, OLG:

(a) Failed to cause the advance fee contract and all materials used in obtaining the advance fee agreement to be submitted to the Department of Real Estate prior to use as required by Section 10085 of the Code and Section 2970 of Title 10 of the California Code of Regulations (hereinafter "the Regulations");

(b) Failed to immediately deliver said trust funds into a neutral escrow depository, or into a trust fund account in violation of Section 10146 of the Code; and

(c) Failed to furnish the principal borrower the verified accounting required by Section 10146 of the Code and Section 2972 of the Regulations.

10

The acts and/or omissions of OLG described in the First Cause of Action, constitute violation of Section 10177(d) of the Code in conjunction with Sections 10085, 10085.5, and 10146 of the Code and Sections 2970 and 2972 of the Regulations, and are cause for the suspension or revocation of OLG's license and license rights.

SECOND CAUSE OF ACTION

11

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

12

In acting as a real estate broker, as described in Paragraph 6, OLG accepted or received funds in trust (hereinafter "trust funds") from or on behalf of lenders, investors, note purchasers, borrowers, and others in connection with the servicing, solicitation, negotiation, processing, and consummation of mortgage loan investments by OLG.

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The aforesaid trust funds accepted or received by OLG were deposited or caused to be deposited by OLG into one or more bank accounts (hereinafter "trust funds accounts") maintained by OLG for the handling of trust funds, including but not limited to the following:

<u>TITLE AND ACCOUNT NUMBERS</u>	<u>BANK</u>
Of Lending Group Inc Trust Account Account No. 800-0010-4993 (hereinafter "Trust 1")	First Republic Bank 249 Main Street Pleasanton, CA 94566
Of Lending Group Inc Trust Account Account No. 800-0010-5198 (hereinafter "Trust 2")	First Republic Bank 249 Main Street Pleasanton, CA 94566
Of Lending Group Inc Operating Account Account No. 800-0010-5016 (hereinafter "Bank 1")	First Republic Bank 249 Main Street Pleasanton, CA 94566
Of Lending Group Inc Account No. 523006815 (hereinafter "Bank 2")	Heritage Bank of Commerce 300 Main Street Pleasanton, CA 94566

In connection with the receipt and disbursement of trust funds, OLG:

(a) Failed to deposit trust funds into one or more trust funds accounts in the name of OLG as trustee at a bank or other financial institution, in conformance with Section 10145 of the Code and Section 2832 of the Regulations;

(b) Failed to maintain a written control record of all trust funds received and disbursed, containing all information required by Section 2831 of the Regulations;

(c) Failed to maintain separate beneficiary or transaction records containing all information required by Section 2831.1 of the Regulations;

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1 (d) Failed to reconcile the balance of separate beneficiary or transaction
2 records with the control record of trust funds received and disbursed at least once a month,
3 and/or failed to maintain a record of such reconciliations for each account as required by Section
4 2831.2 of the Regulations; and

5 (e) Caused, permitted, and/or allowed, the possible withdrawal of trust funds
6 from the trust funds accounts by a person who was not licensed by the Department and not
7 covered by a fidelity bond in violation of Section 2834 of the Regulations.

8 15

9 In the course of the activities described in Paragraph 7, OLG, failed to retain the
10 real estate salesperson license certificates of Stacy Castro, Carlyse M. Ford, Micaelanne F.
11 Hogarty, Canaan I. Johnson, Craig K. Kusel, Matthew A. Lanning, David W. Morris, James A.
12 Rivera, Eric Sanchez, Michael T. Talasaz, James F. Torpey, and Jeff G. Westin at his main
13 office as required by Section 10160 of the Code and Section 2753 of the Regulations.

14 16

15 In connection with the mortgage loan brokerage business described in Paragraph
16 6, OLG violated and/or willfully failed to comply with Section 10240 of the Code by:

17 (a) Failing to cause to be delivered to the borrowers the written Mortgage
18 Loan Disclosure Statement as required by Section 10241 of the Code;

19 (b) Failing to obtain the signature of the borrowers on written Mortgage Loan
20 Disclosure Statements; and/or

21 (c) Failing to retain on file for a period of three years a true and correct copy
22 of a written Mortgage Loan Disclosure Statements signed by the borrowers.

23 17

24 The facts alleged in the Second Cause of Action are grounds for the suspension
25 or revocation of Respondent OLG's license and license rights under the following sections of
26 the Code and Regulations:

27 ///

1 (1) As to Paragraphs 14(a), under Section 10177(d) of the Code in
2 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

3 (2) As to Paragraph 14(b), under Section 10177(d) of the Code in
4 conjunction with Section 2831 of the Regulations;

5 (3) As to Paragraph 14(c), under Section 10177(d) of the Code in conjunction
6 with Section 2831.1 of the Regulations;

7 (4) As to Paragraph 14(d), under Section 10177(d) of the Code in
8 conjunction with Section 2831.2 of the Regulations;

9 (5) As to Paragraph 14(e), under Section 10177(d) of the Code in conjunction
10 with Section 2834 of the Regulations;

11 (6) As to Paragraphs 15, under Section 10177(d) of the Code in conjunction
12 with Section 10160 of the Code and Section 2753 of the Regulations; and

13 (7) As to Paragraph 16, under Section 10177(d) of the Code in conjunction
14 with Section 10240 of the Code.

15 In addition, the Department is entitled to reimbursement of the costs of its audit
16 pursuant to Section 10148 of the Code.

17 THIRD CAUSE OF ACTION

18 18

19 Each and every allegation in Paragraphs 1 through 17, inclusive, above, are
20 incorporated by this reference as if fully set forth herein.

21 19

22 Respondent HOGARTY failed to exercise reasonable supervision over the acts
23 of OLG in such a manner as to allow the acts and events described in Paragraphs 7 through 17
24 to occur.

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The acts and/or omissions of HOGARTY described in Paragraph 19, constitute failure on the part of HOGARTY, as designated broker-officer for OLG, to exercise reasonable supervision and control over the licensed activities of OLG as required by Section 10159.2 of the Code.

The facts described above as to the Third Cause of Accusation constitute cause for the suspension or revocation of the licenses and license rights of Respondent HOGARTY under Section 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

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 Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.


E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 29th day of September, 2010