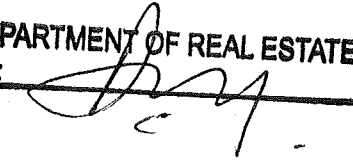


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**FILED**

APR 19 2012

DEPARTMENT OF REAL ESTATE  
BY: 

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 )  
13 JAMES ALFRED SANTANA, doing business as )  
14 Above Board Realty, Bankers First Real Estate, )  
15 West Pointe Escrow, and Silex Settlement Services, )  
16 Respondents. )

No. H-38064 LA

ACCUSATION

17 The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State  
18 of California, for cause of Accusation against JAMES ALFRED SANTANA doing business as  
19 Above Board Realty, Bankers First Real Estate, West Pointe Escrow, and Silex Settlement  
20 Services, alleges as follows:

21 1.

22 The Complainant, Robin Trujillo, acting in her official capacity as a Deputy Real  
23 Estate Commissioner of the State of California, makes this Accusation.

24 2.

25 All references to the "Code" are to the California Business and Professions Code  
26 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

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License History

3

JAMES ALFRED SANTANA ("SANTANA"). At all times mentioned, Respondent SANTANA was licensed or had license rights issued by the Department as a real estate broker. On March 28, 1995, SANTANA was originally licensed as a real estate broker.

Brokerage

4.

At all times mentioned, in the City of Fountain Valley, County of Los Angeles, SANTANA acted as a real estate broker conducting licensed activities within the meaning of:

A. Code Section 10131(a). Respondent operated a residential resale brokerage doing business as Above Board Realty and Bankers First Real Estate. Respondent engaged in the business of acted in the capacity of, advertised or assumed to act a as real estate broker, including the solicitation for listings of and the negotiation of the sale of real property as the agent of others.

B. Code Section 10131(d). Respondent engaged in activities with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance including loss mitigation, loan modifications, foreclosure prevention, short sales and short sale-repurchase financing.

C In addition, Respondent conducted broker-controlled escrows through his escrow operation doing business as and West Pointe Escrow, and Silex Settlement Services, under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

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1 FIRST CAUSE OF ACTION  
2 (Broker-Controlled Escrow Audit)

3 5.

4 On September 7, 2011, the Department completed an audit examination of the  
5 books and records of SANTANA pertaining to the broker-controlled activities described in  
6 Paragraph 4, herein above, which require a real estate license. The audit examination covered a  
7 period of time beginning on August 1, 2007 and ending on February 28, 2011.

8 Trust Accounts

9 6.

10 At all times mentioned, in connection with the activities described in Paragraph 4,  
11 above, SANTANA accepted or received funds including funds in trust (hereinafter "trust funds")  
12 for real estate transactions escrowed by SANTANA's in-house escrow operation. Thereafter  
13 SANTANA made disbursements of such trust funds. From time to time herein mentioned during  
14 the audit period, said trust funds were deposited and/or maintained by SANTANA in the trust  
15 accounts as follows:

16  
17 "Above Board Real Estate Solutions  
18 No. xxxxxx4240"  
19 Wells Fargo Bank  
20 Portland, OR

(T/A 1)

21 "Silex Settlement Services  
22 No. xxxxxx3778  
23 US Bank  
24 ST. Paul, MN

(T/A 2)

25 ///

26 ///

27 ///

///

///

1 (Broker-Controlled Escrow Audit Violations)

2 7.

3 In the course of activities described in Paragraphs 4 and 6 above, and during the  
4 audit examination period in Paragraph 5, Respondent SANTANA acted in violation of the Code  
5 and the Regulations in that SANTANA:

6 (a) Permitted, allowed or caused the disbursement of trust funds from escrow trust  
7 accounts T/A 1 and T/A 2, where the disbursement of funds reduced the total of aggregate funds  
8 in the trust accounts set forth below, to an amount which was less than the existing aggregate  
9 trust fund liability of SANTANA to every principal who was an owner of said funds, without  
10 first obtaining the prior written consent of the owners of said funds, as required by and in  
11 violation of Code Section 10145 and Regulations 2832.1, 2950(g) and 2951:

- 12
- 13 ▪ T/A 1 \$1,000.00
  - 14 ▪ T/A 2 \$23,323.50
- 15

16 (b) Failed to maintain an accurate and complete control record in the form of a  
17 columnar record in chronological order of all trusts funds received and disbursed by  
18 SANTANA's escrow operation, West Pointe Escrow, in violation of Code Section 10145 and  
19 Regulations 2831, 2950(d) and 2951.

20 (c) Failed to maintain an accurate and complete separate record of all trusts funds  
21 received, deposited and disbursed by SANTANA's escrow operation, West Pointe Escrow, in  
22 violation of Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

23 (d) Failed to perform a monthly reconciliation of the balance of all separate  
24 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all  
25 trust funds received for trust accounts T/A 1 and T/A 2, in violation of Code Section 10145 and  
26 Regulations 2831.2, 2950(d) and 2951.

27 ///

1 (e) Permitted Gonzalo Ramos, an unlicensed and unbonded person, to be an  
2 authorized signatory on T/A 1 and T/A 2, into which were deposited trust funds for buyers and  
3 sellers, in violation of Code Section 10145 and Regulations 2834(a), 2950(d) and 2951.

4 (f) T/A 1 and T/A 2 were neither in the name of the broker as trustee at a bank or  
5 other financial institution, nor designated as trust accounts, in violation of Code Section 10145 of  
6 the Code and Regulations 2832(a), 2950(d) and 2951.

7 (g) Escrow instructions were neither signed nor initialed by buyers and sellers in  
8 the Catalpa purchase and sale transaction, in violation of Code Section 10145 and Regulations  
9 2950(b), 2950(d) and 2951.

10 (h) Failed to disclose in writing to all parties of SANTANA's financial interest  
11 and ownership interest of his escrow operation, in violation of Code Sections 10145 and  
12 10176(g) and Regulation 2950(h).

13 (i) Failed to retain the salesperson license certificate for eleven (11) salespersons,  
14 in violation of Code Section 10160 and Regulation 2753.

15 (j) Failed to maintain a signed broker salesperson agreement with eight (8)  
16 salespersons, in violation of Regulation 2726.

17 (k) Failed to notify the Department of the termination of one salesperson, Jaime  
18 Aguliar, in violation of Code Section 10161.8 and Regulation 2752.

19 (l) Used the fictitious name "James Santana Realty" to conduct licensed activities,  
20 without holding a license bearing said fictitious business name, in violation of Code Section  
21 10159.5 and Regulation 2731.

22 (m) Conducted escrow activities at 8041 Florence Avenue, Downey, California,  
23 prior to obtaining a branch office license from the Department, in violation of Code Section  
24 10163 and Regulation 2715.

25 (n) After notice and subpoena on March 10, 2011, failed to retain all records of  
26 SANTANA's activity during the audit period requiring a real estate broker license, in violation of  
27 Code Section 10148. Records not provided include but are not limited to West Pointe Escrow

1 and Silex Settlement Services escrow documentation, escrow trust fund records and  
2 reconciliations, invoices and cancelled checks.

3 (o) SANTANA failed to exercise reasonable control and supervision over the  
4 activity of his brokerage including the activities conducted by the fictitious business names  
5 operating under his license, including but not limited to Above Board Realty, Bankers First Real  
6 Estate, West Pointe Escrow, and Silex Settlement Services, to secure full compliance with the  
7 Real Estate Law, including trust fund handling for operations. Additionally, SANTANA had no  
8 system in place for regularly monitoring his compliance with the Real Estate Law especially in  
9 regard to establishing, systems, policies and procedures to review broker-controlled escrow trust  
10 fund handling for buyers and sellers, in violation of Code Section 10177(h) and Regulation 2725.

11 (Broker-Controlled Escrow Audit Violations)  
12 (Disciplinary Statutes and Regulations)

13 8.

14 The conduct of Respondent SANTANA, as alleged and described in Paragraph 7,  
15 above, violated the Code and the Regulations as set forth below:

16 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
17 7(a)	Code Section 10145 and Regulations 2832.1, 18 2950(g) and 2951
19 7(b)	Code Section 10145 and Regulations 2831, 2950(d) 20 and 2951
21 7(c)	Code Section 10145 and Regulations 2831.1, 22 2950(d) and 2951
23 7(d)	Code Section 10145 and Regulations 2831.2, 24 2950(d) and 2951
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Code Section 10145 and Regulations 2834(a)  
2950(d) and 2951  
  
Code Section 10145 and Regulations 2832(a),  
2950(d) and 2951  
  
Code Section 10145 and Regulations 2950(b),  
2950(d) and 2951  
  
Code Sections 10145 and 10176(g) and Regulation  
2950(h)  
  
Code Section 10160 and Regulation 2753  
  
Regulation 2726  
  
Code Section 10161.8 and Regulation 2752  
  
Code Sections 10159.5 and Regulation 2731  
  
Code Sections 10163 and Regulation 2715  
  
Code Section 10148  
  
Code Section 10177(h) and Regulation 2725

The foregoing violations constitute cause for discipline of the real estate license and license rights of SANTANA under the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

SECOND CAUSE OF ACTION  
(Complaint of Takis S.)

9.

On November 24, 2010, purchaser Takis S. (Takis) signed a residential purchase agreement for the purchase of 9217 Meldar Avenue, Downey, California. Takis gave George Rivas, an expired salesperson as of May 15, 2010, co-owner and office manager of Bankers First Real Estate, from whom Takis was led to believe was a real estate licensee and the selling agent, for the Meldar Avenue, property, an earnest money deposit of \$4,000.00. Takis' offer was not accepted. Despite representations by George Rivas that it would be forth coming, to date, Takis' deposit has neither been returned to him by George Rivas nor by SANTANA, who had the supervisory responsibility for Bankers First Real Estate as broker and/or as co-owner.

10.

The conduct of Respondent SANTANA, as alleged and described in Paragraph 9, above, violated the Code and the Regulations as set forth below:

A. Code Section 10137, for employing and/or compensating George Rivas as a real estate licensee.

B. Code Sections 10163, 10177(d) and/or 10177(g) and Regulation 2715, for conducting escrow activities at 8041 Florence Avenue, Downey, California, prior to obtaining a branch office license from the Department.

C. Code Section 10177(g), for negligence in the handling of the Takis purchase transaction and escrow.

D. Code Section 10177(h) and Regulation 2725, for lack of supervision of Bankers First Real Estate and George Rivas.



THIRD CAUSE OF ACTION  
(Complaint of Miguel G.)

11.

On or about November 10, 2010, purchaser Miguel G. (Miguel) signed a residential purchase agreement for the purchase of 394 Princeton St., Los Angeles, California. Miguel gave George Rivas, an expired salesperson as of May 15, 2000, co-owner and office manager of Bankers First Real Estate, from whom Miguel was led to believe was a real estate licensee and the selling agent, an earnest money deposit of \$6,000.00. George Rivas promised Miguel that he would 'hold the property' for Miguel. He did not hold it. The Princeton property was sold by Bankers First Real Estate to another buyer. Yet to date, Miguel's deposit has neither been returned to him by George Rivas nor by SANTANA, who had the supervisory responsibility for Bankers First Real Estate as broker and/or as co-owner.

12.

The conduct of Respondent SANTANA, as alleged and described in Paragraph 11, above, violated the Code and the Regulations as set forth below:

- A. Code Section 10137, for employing George Rivas as a real estate licensee.
- B. Code Sections 10163, 10177(d) and/or 10177(g) and Regulation 2715, for conducting escrow activities at 8041 Florence Avenue, Downey, California, prior to obtaining a branch office license from the Department.
- C. Code Section 10177(g), for negligence in the handling of the Miguel G. purchase transaction and escrow.
- D. Code Section 10177(h) and Regulation 2725, for lack of supervision of Bankers First Real Estate and George Rivas.

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FOURTH CAUSE OF ACTION  
(Negligence)

13.

The overall conduct of Respondent SANTANA constitutes negligence and is cause for the suspension or revocation of the real estate license and license rights of said Respondent pursuant to the provisions of Code Section 10177(g).

FIFTH CAUSE OF ACTION  
(Breach of Fiduciary Duty)

14.

The overall conduct, acts and omissions of Respondent SANTANA's constitute a breach of fiduciary duty owed his real estate clientele of buyers and sellers and escrow trust fund beneficiaries for SANTANA's escrow operation, West Pointe Escrow, of good faith, trust, confidence and candor, within the scope of his relationship with his clientele agreed relationship, in violation of Code Section 10177(g). Additionally, by failing to deposit escrow receipts, earnest money deposits and purchase funds into a protected trust accounts, as set in Paragraph 7(f), above, SANTANA exposed trust funds to taxing authorities, including the Internal Revenue Service and California Franchise Tax Board and exposed trust fund beneficiaries to the general creditors of SANTANA.

SIXTH CAUSE OF ACTION  
(Supervision and Compliance)

15.

The overall conduct of Respondent JAMES ALFRED SANTANA constitutes a failure on said Respondent's part, as former officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of SANTANA as required by Regulation 2725, and to keep SANTANA in compliance with the Real Estate Law, with specific regard to corporate broker management, escrow operation management and escrow trust fund handling, and for permitting unlicensed third parties to use his broker license in

1 SANTANA's activities which require a real estate license, for pay, and is cause for discipline of  
2 the real estate license and license rights of all Respondent pursuant to the provisions of Code  
3 Sections 10177(d), 10177(g) and 10177(h).

4 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
5 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
6 action against the license and license rights of Respondent JAMES ALFRED SANTANA, under  
7 the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such  
8 other and further relief as may be proper under other applicable provisions of law including but  
9 not limited to restitution and costs of audit, investigation and enforcement.

10 Dated at Los Angeles, California

11 this 18 day of April 2012.

12   
13 Robin Trujillo  
14 Deputy Real Estate Commissioner

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24 cc: James Alfred Santana.  
25 Robin Trujillo  
26 Sacto  
27 Enforcement  
Audits