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**FILED**

SEP 10 2012

DEPARTMENT OF REAL ESTATE  
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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	
	)	NO. H-38064 LA
JAMES ALFRED SANTANA, doing business	)	
As Above Board Realty, Bankers First	)	
Real Estate West Point Escrow, and	)	
Silex Settlement Services,	)	
	)	
Respondent.	)	

ORDER DENYING RECONSIDERATION

On July 31, 2012, a Decision was rendered in the above-entitled matter. The Decision was to become effective on August 27, 2012, and was stayed by separate Order to September 6, 2012.

On August 20, 2012 Respondent petitioned for reconsideration of the Decision of July 31, 2012.

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I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of July 31, 2012, and reconsideration is hereby denied.

IT IS SO ORDERED 9/6/2012.

Real Estate Commissioner

  
By WAYNE S. BELL  
Chief Counsel

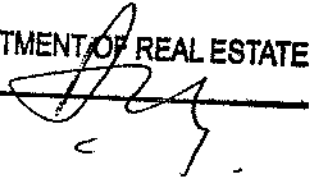
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**FILED**

AUG 27 2012

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of	)	No. H-38064 LA
	)	
JAMES ALFRED SANTANA, doing business as	)	
Above Board Realty, Bankers First Real	)	
Estate, West Pointe Escrow and	)	
Silex Settlement Services,	)	
	)	
Respondent.	)	

ORDER STAYING EFFECTIVE DATE

On July 31, 2012, a Default Decision was rendered in the above-entitled matter to become effective August 27, 2012.

IT IS HEREBY ORDERED that the effective date of the Default Decision of July 31, 2012 is stayed for a period of ten (10) days.

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1                   The Default Decision of July 31, 2012, shall become  
2 effective at 12 o'clock noon on September 6, 2012.

3                   IT IS SO ORDERED 8/27/2012

4  
5                   Real Estate Commissioner

6 *Dolores Weeks*

7 By: DOLORES WEEKS  
8                   Regional Manager

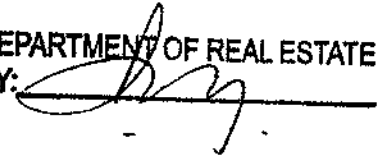
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**FILED**

AUG - 6 2012

DEPARTMENT OF REAL ESTATE

BY:



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-38064 LA
	)	
JAMES ALFRED SANTANA, doing business as	)	
Above Board Realty, Bankers First Real Estate,	)	
West Pointe Escrow, and Silex Settlement Services,	)	
	)	
Respondent.	)	
_____	)	

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on July 17, 2012 and the findings of fact set forth herein are based on one or more of the following: (1) Respondent JAMES ALFRED SANTANA's express admissions; (2) affidavits; and (3) Department Audit Report LA 100153; (4) Complaint of Takis S.; (5) Complaint of Miguel G.; and (4) other evidence.

FACTUAL FINDINGS

1.

On April 18, 2012, Robin Trujillo made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, to Respondent's last known mailing addresses on file with the Department on April 19, 2012, by certified mail.

2.

On July 17, 2012, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent JAMES ALFRED SANTANA default was entered herein. All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

#### 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, and in the City of Anaheim, County of Orange, 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.

(Broker-Controlled Escrow Audit)

5.

On September 7, 2011, the Department completed an audit examination of the books and records of SANTANA pertaining to the broker-controlled activities described in Finding 4, herein above, which require a real estate license. The audit examination covered a period of time beginning on August 1, 2007 and ending on February 28, 2011. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully set forth in Audit Report LA 100153 and the exhibits and workpapers attached thereto.

Trust Accounts

6.

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

"Above Board Real Estate Solutions

No. xxxxxx4240"

Wells Fargo Bank

Portland, OR

(T/A 1)

"Silex Settlement Services

No. xxxxxx3778

US Bank

ST. Paul, MN

(T/A 2)

(Broker-Controlled Escrow Audit Violations)

7.

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

(a) Permitted, allowed or caused the disbursement of trust funds from escrow trust accounts T/A 1 and T/A 2, where the disbursement of funds reduced the total of aggregate funds in the trust accounts set forth below, to an amount which was less than the existing aggregate trust fund liability of SANTANA to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of

said funds, as required by and in violation of Code Section 10145 and Regulations 2832.1, 2950(g) and 2951:

T/A 1 \$1,000.00

T/A 2 \$23,323.50

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

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

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

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

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

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

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

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

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

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



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

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

(n) After notice and subpoena on March 10, 2011, failed to provide proof of retention of all records of SANTANA's activity during the audit period requiring a real estate broker license, in violation of Code Section 10148. Records not provided include but are not limited to West Pointe Escrow and Silex Settlement Services escrow documentation, escrow trust fund records and reconciliations, invoices and cancelled checks.

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

8.

SANTANA employed and/or compensated George Rivas to conduct the following activities.

(Complaint of Takis S.)

a).

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 forthcoming, 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.

(Complaint of Miguel G.)

(b).

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.

9.

Respondent SANTANA conducted escrow activities at 8041 Florence Avenue, Downey, California, prior to obtaining a branch office license from the Department, in violation of Code Section 10163 and Regulation 2715.

(Negligence)

10.

The overall conduct of Respondent SANTANA constitutes negligence. This conduct and violation are cause for the suspension or revocation of SANTANA's real estate license pursuant to Code Section 10177(g).

(Breach of Fiduciary Duty)

11.

The conduct, acts and omissions of Respondent SANTANA, constitutes a breach of fiduciary duty of good faith, trust, confidence and candor, within the scope of their contractual relationship, owed to Respondent SANTANA's real estate consumers and property management clientele by his lack of management. This conduct and violation are cause for discipline of the real estate license and license rights of Respondent SANTANA pursuant to Code Section 10177(g).

(Supervision)

12.

The overall conduct of SANTANA constitutes a failure to exercise supervision and control over the licensed activities of his brokerage. Nor did SANTANA maintain a system in place for regularly monitoring his compliance with the Real Estate Law, which constitutes cause for discipline of the license and license rights of Respondent SANTANA pursuant to Code Section 10177(h).

## DETERMINATION OF ISSUES

1.

(Audit Violations)

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

- 7(a) Code Section 10145 and Regulations 2832.1, 2950(g) and 2951
- 7(b) Code Section 10145 and Regulations 2831, 2950(d) and 2951
- 7(c) Code Section 10145 and Regulations 2831.1, 2950(d) and 2951
- 7(d) Code Section 10145 and Regulations 2831.2, 2950(d) and 2951
- 7(e) Code Section 10145 and Regulations 2834(a), 2950(d) and 2951
- 7(f) Code Section 10145 and Regulations 2832(a), 2950(d) and 2951
- 7(g) Code Section 10145 and Regulations 2950(b), 2950(d) and 2951
- 7(h) Code Sections 10145 and 10176(g) and Regulation 2950(h)
- 7(i) Code Section 10160 and Regulation 2753
- 7(j) Regulation 2726
- 7(k) Code Section 10161.8 and Regulation 2752
- 7(l) Code Sections 10159.5 and Regulation 2731
- 7(m) Code Sections 10163 and Regulation 2715
- 7(n) Code Section 10148
- 7(o) 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).

2.

(Complaint of Tarkis S. and Miguel G)

The conduct of Respondent SANTANA, described in Finding 8 above, violated Code Section 10137, and is cause for discipline of the license and license rights of Respondent SANTANA pursuant to Code Sections 10137, 10177(d) and 10177(g).

3.

The conduct of Respondent SANTANA, described in Finding 9 above, violated Code Section 10163 and Regulation 2715, and is cause for discipline of the license and license rights of Respondent SANTANA pursuant to Code Sections 10165, 10177(d) and 10177(g).

4.

(Negligence, Breach of Fiduciary Duty, Supervision)

The conduct of Respondent SANTANA, as described in Findings 10 through 12, and is cause for disciplinary action pursuant to Code Section 10177(g) and 10177(h).

5.

The standard of proof applied was clear and convincing evidence to a reasonable certainty.

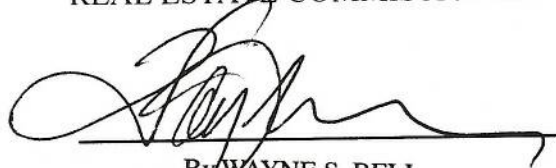
ORDER

The real estate license and the license rights of Respondent JAMES ALFRED SANTANA, under the provisions of Part I of Division 4 of the Business and Professions Code are hereby revoked.

This Decision shall become effective at 12 o'clock noon on August 27, 2012.

DATED: July 31, 2012

REAL ESTATE COMMISSIONER



By WAYNE S. BELL  
Chief Counsel

**FILED**

1 Department of Real Estate  
2 320 West 4th Street, Ste. 350  
3 Los Angeles, California 90013-1105

JUL 17 2012

4 (213) 576-6982

DEPARTMENT OF REAL ESTATE  
BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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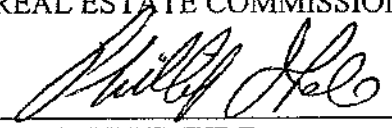
11	In the Matter of the Accusation of	)	No. H-38064 LA
		)	
12	JAMES ALFRED SANTANA, doing business as	)	
	Above Board Realty, Bankers First Real Estate,	)	
13	West Pointe Escrow, and Silex Settlement Services,	)	
		)	
14	Respondent.	)	

15 DEFAULT ORDER

16 Respondent JAMES ALFRED SANTANA, having failed to file a Notice of  
17 Defense within the time required by Section 11506 of the Government Code, is now in default. It  
18 is, therefore, ordered that a default be entered on the record in this matter.

19 IT IS SO ORDERED July 17, 2012

21 REAL ESTATE COMMISSIONER

22 

23 By: PHILLIP IHDE  
24 Regional Manager