

FILED

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DEPARTMENT OF REAL ESTATE
BY: 

1 ELLIOTT MACLENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 (213) 576-6982 (office)

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
)	
12 FIRST AMERICAN HOME LOANS INC; and,)	No. H- 38638 LA
)	
13 MARK H. BRYAN, individually and as)	
14 designated officer of First American Home Loans Inc.;)	<u>ACCUSATION</u>
)	
15 Respondents.)	
)	
)	

17 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
18 of California, for cause of Accusation against FIRST AMERICAN HOME LOANS INC. and
19 MARK H. BRYAN, individually and as designated officer of Direct Mortgage Funders Inc.,
20 alleges as follows:

21 1.

22 The Complainant, Maria Suarez, 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.
27

1 behalf of others for compensation or in expectation of compensation and for fees often collected
2 in advance.

3 B. Code Section 10131(d) and 10131.2. Respondents advertised, solicited and
4 offered to provide loss mitigation and loan modification services to economically distressed
5 homeowners seeking adjustments to the terms and conditions of their home loans including, but
6 not limited to, repayment plans, forbearance plans, partial claims, and reduction in principal or
7 interest, extenuations, foreclosure prevention and short sales.

8 FIRST CAUSE OF ACCUSATION
9 (Audit Examination)

10 4.

11 On May 22, 2012, the Department completed an audit examination of the books
12 and records of FAHLI limited to the mortgage loan brokerage/loan modification activities only,
13 as described in Paragraph 3, which require a real estate license. The audit examination covered a
14 period of time beginning on January 1, 2010 to February 16, 2012. The audit examination
15 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and
16 more fully discussed in Audit Report LA 110111 and the exhibits and work papers attached to
17 said audit report.

18 Trust Account

19 5.

20 At all times mentioned, in connection with the activities described in Paragraph 4,
21 above, FAHLI accepted or received funds including funds in trust ("trust funds") from or on
22 behalf of actual or prospective parties to transactions including buyers, sellers, lenders and
23 borrowers and loan modification applicants handled by FAHLI and thereafter made deposits and
24 or disbursements of such funds. From time to time herein mentioned, during the audit period,
25 said trust funds were deposited and/or maintained by FAHLI in the bank accounts as follows:

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27 ///

1 "First American Home Loans Inc. ("G/A 1")
2 *****08410"
3 Bank of America
4 Anaheim Hills, California

5 "First American Home Loans Inc. ("G/A 2")
6 *****94926"
7 Wells Fargo Bank
8 Portland, Oregon

8 Audit Violations

9 6.

10 In the course of activities described in Paragraphs 3 and 5, above, and during the
11 examination period described in Paragraph 4, Respondents FAHLI and BRYAN acted in
12 violation of the Code and the Regulations in which Respondents:

13 (a) Failed to retain a true and correct copy of a Department of Real Estate
14 approved Mortgage Loan Disclosure Statement signed by the broker, in violation of Code
15 Section 10240.

16 (b) Failed to display the FAHLI's license number and/or Mortgage Loan
17 Originator unique identifier on the Mortgage Loan Disclosure Statements, in violation of Code
18 Section 10236.4(b).

19 (c) Collected advance fees within the meaning of Code Section 10026 from
20 homeowners seeking loan modification services wherein FAHLI failed to provide loan
21 modification applicants with a pre-approved advance fee agreement from the Department in the
22 form of a no objection letter, in violation of Code Section 10085 and Regulation 2970.

23 (d) With reference to the lack of an advance fee agreement, FAHLI failed to
24 provide a complete description of services to be rendered provided to each homeowner-borrower
25
26
27

1 in 10 point type font and, an allocation and disbursement of the amount collected as the advance
2 fee for each loan modification, in violation of Code Section 10146 and Regulation 2972.

3 (e) Mixed and commingled trust funds and FAHLI's funds by depositing advance
4 fees received for loan modification service fees into FAHLI's general operating accounts, in
5 violation of Code Sections 10145 and 10176(e) and Regulation 2832.

6 (f) Failed to maintain a control record through the instrumentality of a daily
7 journal in chronological order for each beneficiary or transaction, thereby failing to account for
8 advance fees collected for loan modification services, in violation of Code Section 10145 and
9 Regulation 2831.
10

11 (g) Failed to maintain a separate record for each beneficiary or transaction,
12 thereby failing to account for all advance fees collected for loan modification services, in
13 violation of Code Section 10145 and Regulation 2831.1.
14

15 (h) Failed to perform a monthly reconciliation of the balance of all separate
16 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all
17 trust funds received and disbursed by the bank accounts that contain trust funds for advance fees
18 collected for loan modification services, in violation of Code Section 10145 and Regulation
19 2831.2.
20

21 (i) Claimed, charged and collected advance fees after October 10, 2009, the SAFE
22 ACT Initiation Date, for negotiating, arranging and/or offering to broker mortgage loans and loan
23 modifications and other forms of mortgage loan forbearance for fees paid by the borrower
24 J&E D. Respondents received and collected advance fees totaling \$800.00 from homeowner
25 J&E D before FAHLI had fully performed each and every service for which FAHLI had
26 contracted to perform or represented that would be performed during the period of October 11,
27

1 2009 to January 31, 2011, in violation of Code Sections 10085.6, 10145 and 10146 and
2 Regulation 2832.

3 (j) FAHLI ostensibly performed acts for which a real estate license is
4 required, including loss mitigation and loan modification services for prospective loan
5 modification applicants after FAHLI's broker license cancelled and before reissuance, in
6 violation of Code Section 10130. FAFHI was originally licensed by the Department on
7 November 28, 2000 to act as a corporate broker. BRYAN cancelled FAHLI's license with the
8 Department effective September 12, 2003. FAHLI's was relicensed effective June 17, 2010.
9 During the interregnum, FAFHI and BRYAN conducted loan modification activity for the two
10 borrowers tabled below:
11
12

13 Table: Advance Fees Collected for Loan Modifications unlicensed period

14

	Name	Advance Fee Paid	Time Period Collected	
15				
16	1	J&E D	\$1600.00	Prior to and after June 17, 2010
17				
18				
19	2	Henderson	\$ 450.00	Prior to and after June 17, 2010
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1 FIFTH CAUSE OF ACCUSATION
2 (Supervision and Compliance)

3 15.

4 The overall conduct of Respondent BRYAN constitutes a failure on said
5 Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable
6 supervision and control over the licensed activities of FAHLI, as required by Code Section
7 10159.2 and Regulation 2725, and to keep FAHLI in compliance with the Real Estate Law, and
8 is cause for discipline of the real estate license and license rights of Respondent BRYAN
9 pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

10 PRIOR DEPARTMENT ACTION

11 16.

12 On January 20, 2012, in Departmental Case No. H-37103 LA, a Stipulation and
13 Agreement became effective for violations of Sections 10085, 10145 and 10146 of the California
14 Business and Professions Code and Sections 2832, 2832.1, 2970 and 2972 of Title 10, Chapter 6,
15 California Code of Regulations s based on an Accusation filed on March 3, 2011. Respondent
16 BRYAN's real estate broker license were revoked with a right to restricted real estate salesperson
17 license, issued on February 17, 2012, and suspended for ninety (90) days on terms and conditions
18 including commutation by a monetary penalty.
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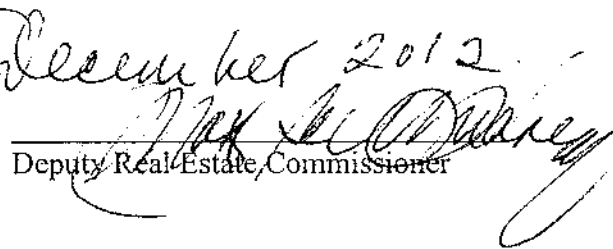
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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against the license and license rights of Respondents FIRST AMERICAN HOME LOANS
4 INC. and MARK H. BRYAN, under the Real Estate Law (Part 1 of Division 4 of the Business
5 and Professions Code) and for such other and further relief as may be proper under other
6 applicable provisions of law including but not limited to: (1) restitution; (2) costs of audit
7 pursuant to Code Section 10148; and (3) costs of investigation and enforcement pursuant to Code
8 Section 10106.

9 Dated at Los Angeles, California

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11 this *11th day of December 2012.*
12 
13 Deputy Real Estate Commissioner
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22

23 cc: First American Home Loans Inc.
24 c/o John Paul Rock designated officer
25 Mark H. Bryan former designated officer
26 Maria Suarez
27 Sacto
Enforcement – Eleazar Galano
Audits – Gina King