

FILED

MAR 22 2013

DEPARTMENT OF REAL ESTATE
BY: 

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9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13)
14 PACIFIC HORIZON FINANCIAL GROUP INC.; and,) No. H- 38769 LA
15)
16 TRINNA MONGTRINH NGUYEN, individually and as)
17 designated officer of Pacific Horizon Financial Group Inc.) ACCUSATION
18)
19 Respondents,)
20)
21)

22 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
23 of California, for cause of Accusation against PACIFIC HORIZON FINANCIAL GROUP INC.,
24 and TRINNA MONGTRINH NGUYEN, individually and as designated officer of Pacific
25 Horizon Financial Group Inc., alleges as follows:

26 1.

27 The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real
Estate Commissioner of the State of California, makes this Accusation.

2.

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.

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License Status

A. PACIFIC HORIZON FINANCIAL GROUP INC. ("PHFGI"). At all times mentioned, Respondent PHFGI was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. On August 19, 2010, PHFGI was originally licensed as a corporate real estate broker. Respondent PHFGI is authorized to act by and through Respondent TRINNA MONGTRINH NGUYEN, PHFGI's current broker, and formerly through Jose F. Casares, as PHFGI's designated brokers during the audit period, pursuant to Business and Professions Code (hereinafter "Code") Sections 10159.2 and 10211 to be responsible for ensuring compliance with the Real Estate Law.

B. TRINNA MONGTRINH NGUYEN ("NGUYEN"). At all times mentioned, Respondent NGUYEN was licensed or had license rights issued by the Department as a real estate broker. On November 17, 2000, NGUYEN was originally licensed as a real estate broker. Since its inception on August 19, 2010, NGUYEN became the designated officer of PHFGI.

C. Jose F. Casares ("Casares"). At all times mentioned, Casares was licensed or had license rights issued by the Department as a real estate broker. On October 13, 2006, Casares was originally licensed as a real estate broker. Since its inception on August 19, 2010, Casares became a co-designated officer of PHFGI along with NGUYEN. On August 21, 2012, Casares' real estate broker license and license rights were revoked pursuant to Department of Real Estate cases H-37997 LA and H-37568.

D. Anthony Doan, an unlicensed person, and NGUYEN are equal shareholders of PHFGI.

E. NGUYEN is PHFGI's Chief Executive Officer and Anthony Doan is Chairman of the Board of Directors of PHFGI.

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1 Table: Designated Officer Tenure

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Designated Officers	Co-Tenure during the Audit period
Jose F. Casares	August 19, 2010 to August 20, 2012
Trinna Mongtrinh Nguyen	August 19, 2010 to August 20, 2012 and sole designated officer as of August 21, 2013

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8 Brokerage

9 4.

10 At all times mentioned, in the City of Fountain Valley, County of Orange, PHFGI
11 and NGUYEN acted as real estate brokers conducting licensed activities within the meaning of:

12 A. Code Section 10131(d). Respondents engaged in activities with the public
13 wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on
14 real property, wherein such loans were arranged, negotiated, processed and consummated on
15 behalf of others for compensation or in expectation of compensation and for fees often collected
16 in advance.

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

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1 FIRST CAUSE OF ACCUSATION

2 (Audit)

3 5.

4 On November 13, 2012, the Department completed an audit examination of the
5 books and records of PHFGI limited to the mortgage loan brokerage, loan modification and
6 consultation activities only, as described in Paragraph 4, which require a real estate license. The
7 audit examination covered a period of time beginning on November 3, 2009 and ending on May
8 31, 2012. The audit examination revealed violations of the Code and the Regulations as set forth
9 in the following paragraphs, and more fully discussed in Audit Report LA 110252 and the
10 exhibits and work papers attached to said audit report.

11 Bank Account

12 6.

13 PHFGI did not maintain a trust account during the audit period. In lieu thereof,
14 PHFGI collected trust funds in the form of advance fees which were deposited into PHFGI's
15 general business operating account, as set forth herein below:

16
17 "Pacific Horizon Financial Group Inc. ("BA 1")
18 *****01187"
19 East West Bank

20 Audit Violations

21 7.

22 In the course of activities described in Paragraphs 4 and 6, above, and during the
23 examination period described in Paragraph 5, Respondents PHFGI and NGUYEN acted in
24 violation of the Code and the Regulations in which Respondents:

25 (a) The Le Complainant. Negotiated for the refinance, consultation and loan
26 modification services for the borrowers Le's mortgage loan for the property located at 14211
27 Riata Street, in Westminster, California.

1 On April 9, 2010, the borrowers Le signed a "Short Refinance
2 Application/Consulting and Processing Fee Agreement" (Agreement) with PHFGI to perform
3 mortgage payment reduction services for the Riata Street property with the borrowers Le's
4 mortgage lenders, Chase/Washington Mutual Bank (1st Lender) and Citi Mortgage, Inc. (2nd
5 Lender). The borrowers Le paid an advance fee of a minimum of \$5,000 to "Pacific Horizon
6 Financial Group" on April 14, 2010.

7 The Agreement recited that the "Transaction would be finished by the end of July
8 2011 or fully refunded to client." On April 9, 2010, the Agreement was signed by PHFGI's
9 unlicensed sales representative, Duke Lam. It was also specified in the Agreement that PHFGI
10 may refer "client", to wit, the borrowers Le, to and/or contract with third parties who would
11 provide financial, loss or foreclosure mitigation services.

12 None of the contracted for loan modification services were performed by PHFGI
13 or by any third party loan processor. On September 9, 2011, at the borrowers Le's instigation,
14 the parties entered into a "Notice of Cancellation." Said Notice recited that the borrowers Le
15 would receive a refund of \$7,500, and was signed by Anthony Doan, Chairman of PHFGI along
16 with borrowers Le's signature. On November 16, 2011, two refund checks were issued from
17 PHFGI's East-West bank account, BA1, signed by NGUYEN and made payable to the borrowers
18 Le, as described below:

<u>Date</u>	<u>Check</u>	<u>Check</u>
<u>No</u>	<u>Date.</u>	<u>Amount</u>
13101	11/16/11	\$4,000
13102	11/16/11	\$3,500
Total		<u>\$7,500</u>

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1 The borrowers Le were not able to cash the two refund checks because
2 insufficient cash balance was on deposit in BA 1 to effect payment. On November 16, 2011, a
3 third check issued from PHFGI in the amount of \$500 was provided to the borrowers Le as a
4 partial refund. To date, \$7,000 of \$7,500 remains due and owing, in violation of Code Sections
5 10130, 10145, 10146, and 10148 and Regulations 2831, 2831.1, 2831.2, 2832, and 2972;

6 (b) Failed to maintain a control record in chronological order for each beneficiary
7 or transaction, thereby failing to account for trust funds in the form of advance fees collected for
8 loan modification services, in violation of Code Section 10145 and Regulation 2831;

9 (c) Failed to maintain a separate record for each beneficiary or transaction, thereby
10 failing to account for all trust funds in the form of advance fees collected for loan modification
11 services, in violation of Code Section 10145 and Regulation 2831.1;

12 (d) BA 1 was not in the name of the broker as trustee at a bank or other financial
13 institution, nor designated as a trust account although BA 1 was used for handling of trust funds
14 in the form of advance fees, in violation of Code Section 10145 of the Code and Regulation
15 2832(a);

16 (e) PHFGI failed to provide a complete description of services to be rendered
17 provided to each loan modification applicant, including the borrowers Le, in 10 point type font
18 and, an allocation and disbursement of the amount collected as the advance fee for each loan
19 modification, in violation of Code Section 10146 and Regulations 2832 and 2972;

20 (f) PHFGI and NGUYEN failed to perform a monthly reconciliation of the
21 balance of all separate beneficiary or transaction records maintained pursuant to Regulation
22 2831.1 with the record of all trust funds received and disbursed by BA 1 which contains trust
23 funds for advance fees collected for loan modification services, in violation of Code Section
24 10145 and Regulation 2831.2;

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1 (g) Collected advanced fees in the amount of \$7,500 from the borrowers Le, yet
2 failed to refund \$7,000, in violation of Code Section 10145;

3 (h) PHFGI failed to disclose the real estate license identification number of
4 PHFGI and and/or PHFGI' s representatives license numbers including NGUYEN's Mortgage
5 Loan Applications while soliciting borrowers, in violation of Code Section 10140.6(b) and
6 Regulation 2773;

7 (i) PHFGI moved its main office to 18350 Mount Langley St., Suite 204, Fountain
8 Valley on January 2012. PHFGI failed to notify the Department regarding the change of
9 PHFGI's principal place of business by the next business day following the change, in violation
10 of Code Section 10163 and Regulation 2715;

11 (j) Performed acts for which a real estate license is required, including soliciting
12 for mortgage loan brokerage, loan modification and consultation activities before PHFGI's
13 broker license had issued, in violation of Code Section 10130. PHFGI's broker license was
14 issued on August 19, 2010. On April 9, 2012, Duke Lam, an unlicensed salesperson of PHFGI,
15 as aforesaid, conducted licensed activities including negotiating for mortgage loan modification
16 and consultation services with the borrowers Le;
17

18 (k) Failed to retain all records of PHFGI's activity during the audit period
19 requiring a real estate broker license, including but not limited to, bank statements, bank
20 signature card, records of receipts and disbursements, trust fund records and mortgage loan
21 refinance/modification transaction files related to fees collected in advance, for the audit
22 examination, in violation of Code Section 10148; and
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24 (l) NGUYEN failed to exercise reasonable control and supervision over the
25 activity of PHFGI to secure full compliance with the Real Estate Law, in violation of Code
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1 Sections 10159.2, 10177(h) and Regulation 2725.

2 Discipline Statutes and Regulations

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4 8.

5 The conduct of Respondents PHFGI and NGUYEN, described in Paragraph 7,
6 above, violated the Code and the Regulations as set forth below:

7 <u>PARAGRAPH</u>	8 <u>PROVISIONS VIOLATED</u>
9 7(a)	Code Sections 10130, 10145, 10146, and 10148 and 10 Regulations 2831, 2831.1, 2831.2, 2832, and 2972
11 7(b)	Code Section 10145 and Regulation 2831
12 7(c)	Code Section 10145 and Regulation 2831.1
13 7(d)	Code Section 10145 and Regulation 2832(a)
14 7(e)	Code Section 10146 and Regulations 2972/2832
15 7(f)	Code Section 10145 and Regulation 2831.2
16 7(g)	Code Section 10145
17 7(h)	Code Section 10140.6(b) and Regulation 2773
18 7(i)	Code Section 10163 and Regulation 2715
19 7(j)	Code Section 10130
20 7(k)	Code Section 10148
21 7(l)	Code Sections 10159.2 and 10177(h) and Regulation 2725 (NGUYEN)

22 The foregoing violations constitute cause for discipline of the real estate license and license
23 rights of Respondents PHFGI and NGUYEN, as the case may be, under the provisions of Code
24 Sections 10176(i), 10177(d) and/or 10177(g) and 10177(h) for Respondent NGUYEN.

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1 SECOND CAUSE OF ACCUSATION

2 (Audit)

3 9.

4 On July 31, 2012, the Department completed an audit examination of the books
5 and records of NGUYEN limited to verification of the Department's licensing records, as
6 described in Paragraph 4, which require a real estate license. The audit examination covered a
7 period of time beginning on June 11, 2012 and ending on July 26, 2012. The audit examination
8 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and
9 more fully discussed in Audit Report LA 110253 and the exhibits and work papers attached to
10 said audit report.

11 Bank Account

12 10.

13 Respondent NGUYEN did not maintain a trust account during the audit period.

14 Audit Violations

15 11.

16 In the course of activities described in Paragraph 4, above, and during the
17 examination period described in Paragraph 9, Respondent NGUYEN acted in violation of the
18 Code and the Regulations in which Respondent:

19 (a) Failed to provide notice to the Department following the change of her
20 principal place of business by the next business day, in violation of Code Section 10163 and
21 Regulation 2715; and

22 (b) Failed to maintain a signed broker salesperson agreement with salesperson
23 Tryzzie Nguyen, in violation of Regulation 2726.

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1 Discipline Statutes and Regulations

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3 12.

4 The conduct of Respondents PHFGI and NGUYEN, described in Paragraph 11,
5 above, violated the Code and the Regulations as set forth below:

6 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7 11(a)	Code Section 10163 and Regulation 2715
8 11(b)	Regulation 2726

9
10 The foregoing violations constitute cause for discipline of the real estate license and license
11 rights of Respondents PHFGI and NGUYEN, as the case may be, under the provisions of Code
12 Sections 10177(d) and/or 10177(g) and 10177(h) for Respondent NGUYEN.

13 THIRD CAUSE OF ACCUSATION

14 (Negligence)

15 13.

16 The overall conduct of Respondents PHFGI and NGUYEN constitutes negligence
17 or incompetence and is cause for discipline of the real estate license and license rights of said
18 Respondents pursuant to the provisions of Code Section 10177(g).

19 FOURTH CAUSE OF ACCUSATION

20 (Fiduciary Duty)

21 14.

22 The overall conduct of Respondents PHFGI and NGUYEN constitutes a breach of
23 their fiduciary duty of good faith, trust, confidence and candor, within the scope of their
24 brokerage relationship, owed to the parties and of PHFGI's brokered transactions including the
25 borrowers Le, in violation of Code Section 10177(g), and constitutes cause for discipline of the
26 real estate license and license rights of said Respondents pursuant to said section.
27

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 PACIFIC HORIZON FINANCIAL
4 GROUP INC. and TRINNA MONGTRINH NGUYEN, under the Real Estate Law (Part 1 of
5 Division 4 of the Business and Professions Code) and for such other and further relief as may be
6 proper under other applicable provisions of law including (1) restitution of \$7,000 to the
7 borrowers Le, pursuant to applicable provisions of the California Administrative Procedure Act
8 including Government Code Section 11519(d), (2) costs of audit pursuant to Code Section
9 10148(b) totaling \$5,643.00; and (3) costs of investigation and enforcement pursuant to Code
10 Section 10106, and as pursuant to other applicable provisions of the California Administrative
11 Procedure Act.

12 Dated at Los Angeles, California

13 this *19 March 2013.*


Deputy Real Estate Commissioner

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23 cc: Pacific Horizon Financial Group Inc.
24 c/o Trinna Mongtrinh. Nguyen D.O.
25 Maria Suarez
26 Sacto
27 Audits – Chona T. Soriano