

FILED

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DEPARTMENT OF REAL ESTATE
BY: 

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7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
)	
12 ICON REALTY LINK INC.;)	No. H- 39366 LA
)	
13 JOEL FRANCO doing business as)	
14 Alliance Marketing Group Inc.; and)	<u>ACCUSATION</u>
)	
15 NICHOLAS J. CUDA, doing business as)	
16 Alliance Marketing Group Inc.)	
)	
17 Respondents.)	

18
19 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of
20 the State of California, Bureau of Real Estate ("Bureau") for cause of Accusation against ICON
21 REALTY LINK INC. ("ICON"), JOEL FRANCO aka Joel Salvador Franco ("FRANCO"), and
22 NICHOLAS J. CUDA ("CUDA") (collectively "Respondents"), is informed and alleges as
23 follows:

24 1.

25 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of
26 the State of California, makes this Accusation in her official capacity.

1 employees, agents and real estate licensees employed by or associated with Respondents
2 committed such act or omission while engaged in the furtherance of the business or operations
3 of Respondents and while acting within the course and scope of their corporate authority and
4 employment including FRANCO and CUDA, and unlicensed salesperson Kirk Dennis
5 (Paragraph 17, below).
6

7 FIRST CAUSE OF ACCUSATION
8 (Audit)

9 7.

10 At all times mentioned, in the City of Temecula, County of Riverside, State of
11 California, Respondents ICON, FRANCO and CUDA acted as real estate brokers and conducted
12 licensed activities within the meaning of:

13 (a) Code Section 10131(a). Respondents ICON, FRANCO (salesperson), and
14 CUDA engaged in the business of, acted in the capacity of, advertised or assumed to act as real
15 estate brokers, including the solicitation for listings of and the negotiation for the sale and resale
16 of real property as the agent of others;

17 (b) Code Section 10131.2. LOP/LOB Program (Lease with Option to Purchase
18 aka Lease with Option to Buy). Respondents ICON, FRANCO and CUDA advertised, solicited,
19 and offered to promote the sale of real property through the instrumentality of Respondent
20 ICON's LOP/LOB program. Prospective home buyers were solicited and were to be shown or
21 offered a residence to purchase within ninety (90) days of payment of an advance fee, in the
22 form of an "Finders Fee" or generic "fee" for consultation or a "fee" for obtaining an option on
23 real property of for an extension, and including a fee for services to be rendered;
24

25 (c) Code Section 10131.2. RTO Program (Rent To Own). Respondents ICON,
26 FRANCO and CUDA advertised, solicited and offered to promote the rental of real property

1 through the instrumentality of Respondent ICON's RTO program. Prospective renters were
2 solicited and would be offered a residence to purchase within ninety (90) days of payment of an
3 advance fee, in the form of a "Finders Fee" or generic "fee" for consultation or a "fee" for
4 obtaining an option on real property of for an extension of and for services to be rendered;
5 and
6

7 (d) BCR Program. Bad Credit Repair/Bad Credit Restoration). Respondents
8 ICON, FRANCO and CUDA advertised, solicited and offered to promote the credit repair and
9 restoration through the instrumentality of Respondent ICON's BCR program. Prospective
10 renters were solicited and were to be offered a residence to purchase within ninety (90) days of
11 payment of an advance fee, in the form of a "Finders Fee," or generic "fee" for consultation or a
12 "fee" for obtaining an option on real property of for an extension of and for services to be
13 rendered.
14

15 Audit Examination

16 8.

17 On September 28, 2012, the Bureau completed an audit examination of the books
18 and records of Respondent ICON pertaining to the residential real estate and LOP/LOB,
19 RTO/BCR Programs described in Paragraph 7, which require a real estate license. The audit
20 examination covered a period of time beginning on December 21, 2010 to June 30, 2012. The
21 audit examination revealed violations of the Code and the Title 10, Chapter 6, California Code
22 of Regulations ("Regulations") as alleged in the following paragraphs, and more fully set forth
23 in Audit Report SD 110067 and the exhibits and work papers attached thereto.
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1 services to be rendered for BCR, LOP or RTO programs, respectively. Said services were not
 2 performed. Nor were the advance fees returned or refunded to the beneficiaries, in violation of
 3 Code Section 10145:
 4

<u>Received From</u>	<u>Amount Collected</u>	<u>Date Deposited Into US Bank</u>	<u>Program</u>
Praparsri S.	\$ 1,995.00	09/14/2010	BCR
Praparsri S.	\$ 5,000.00 (Wire)	09/23/2010	BCR
Ibironke/O.	\$ 6,845.00	09/07/2010	LOP
Leonard H.	<u>\$ 3,500.00</u>	07/07/2011	RTO
	<u>\$17,340.00</u>		

10
 11 (b) Failed to establish and maintain a trust account at a bank or other recognized
 12 financial institution in the name of the broker for deposit of advance fees collected by ICON, in
 13 violation of Code Sections 10145 and 10146. ICON collected \$3,500.00 in advance fees
 14 through its RTO program in the Leonard H. transaction, failed to perform services or refund said
 15 \$3,500.00;

16 (c) Failed to establish and maintain a trust account at a bank or other recognized
 17 financial institution in the name of the broker for deposit of advance fees collected by ICON, in
 18 violation of Code Sections 10145 and 10146. ICON collected \$6,995.00 in advance fees
 19 through its BCR program in the Praparsi S. transactions, failed to perform services or refund
 20 said \$3,500.00;

22 (d) Deposited \$17,590.00 advance fees into a bank account not designated as a
 23 trust account. BA 1 was not in the name of the broker as trustee at a bank or other financial
 24 institution, nor designated as a trust account, in violation of Code Section 10145;

25 (e) Failed to maintain a control record in the form of a columnar record in
 26 chronological order of all "Trust Funds Received, Not Placed Broker's Trust Account," in

1 violation of Code Section 10145 and Regulation 2831;

2 (f) Failed to perform a monthly reconciliation of the balance of all separate
3 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of
4 all trust funds received and disbursed by BA 1, in violation of Code Section 10145 and
5 Regulation 2831.2;

6 (g) Failed to maintain a separate record for each beneficiary or transaction,
7 thereby failing to account for all trust fees in the form of advance fees collected for the
8 aforementioned BCR/RTOLOP/LOB programs, in violation of Code Section 10145 and
9 Regulation 2831.1;

10 (h) ICON, initially licensed on December 10, 2010, collected advanced fees prior
11 to licensure in the Leonard H. and Praparsi S. transaction, in violation of Code Section 10130.

12 11.

13 The conduct of Respondents ICON described in Paragraph 8 above, violated the
14 Code and the Regulations as set forth below:

15	16	17
	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
18	10(a)	Code Section 10145
19	10(b)	Code Sections 10145 and 10146 (Leonard H. Transaction)
20	10(c)	Code Sections 10145 and 10146 (Praparsi S. Transaction)
21	10(d)	Code Section 10145
22	10(e)	Code Section 10145 and Regulation 2831
23	10(f)	Code Section 10145 and Regulation 2831.2
24	10(g)	Code Section 10145 and Regulation 2831.1
25	10(h)	Code Section 10130
26		

1 The foregoing violations constitute cause for the discipline of the real estate licenses and license
2 rights of Respondent ICON under the provisions of Code Sections 10130, 10177(d) and
3 10177(g).
4

5 SECOND CAUSE OF ACCUSATION

(LOP/LOB Program: Lease Option Purchase/Lease Option Buy)

(RTO Program: Rent to Own)

(BCR Program: Bad Credit Repair/Credit Restore)

7 12.

8 At all times mentioned herein, Respondents ICON, FRANCO and CUDA
9 engaged in the business of a soliciting consumers for Respondents' LOP/LOB/RTO/BCR
10 programs and for which Respondents' collection of advance fees required a real estate license
11 by which to operate, within the definition of Code Sections 10131(d) and 10131.2.
12

13 General Allegations

14 13.

15 During the audit period and continuing thereafter to until September 7, 2010,
16 three and one-half months before the audit period commenced, until June 30, 2012.
17 Respondents ICON, FRANCO and CUDA solicited consumers by brochure and other means of
18 media advertising wherein Respondents received were to receive a "Finder's Fee" or generic
19 "fee" for consultation or a "fee" for obtaining an option on real property or for an extension, and
20 for services to be rendered. Said fees ranged between \$3,000 and \$6,845, ostensibly to analyze
21 and repair credit as preliminary to foreclosure prevention or purchase of a residence within three
22 (3) months from contracting with the consumers again ostensibly to qualify said consumers for
23 one of Respondents' offered programs including but not limited to:

24 (1) Bad Credit Repair or Credit Restorral;

25 (2) Lease Option Program to purchase property aka Lease Option to Buy; and

26 (3) Rent To Own.

1 date no credit repair, property showing, or refund of advance fees paid have been made.

2
3 17.

4 Lennard H.

5 On or about July 4, 2011 and ICON, FRANCO, representing himself as a
6 “Broker Associate” of Icon Realty, and CUDA and unlicensed solicited from and received a
7 total of \$3,500 in advance fees for credit repair services from Leonard H. pursuant to ICON’s
8 Realty Link’s “Rent To Own Program.” ICON, FRANCO and CUDA promised to show
9 properties eligible for the Rent to Own Program from a period of six months from the date of the
10 Agreement, to wit, July 4, 2011. To date no credit repair, property showing, or refund of
11 advance fees paid have been made.

12 18.

13 Raudel/Rosa L.

14 On or about January 21, 2011, ICON FRANCO and unlicensed “consultant” Kirk
15 Dennis at ICON’s office solicited from and received a total of \$3,500, \$2,500 in cash and
16 \$1,000 by check in advance fees for credit analysis and repair services from Raudel/Rosa L.
17 pursuant to ICON’s “Rent To Own Program.” ICON FRANCO and Kirk Dennis promised to
18 show Raudel/Rosa L. properties eligible for the Rent to Own Program from a period of six
19 months from the date of the Agreement, to wit, January 21, 2011. To date no credit repair,
20 property showing, or refund of advance fees paid have been made.

21 19.

22 Augustin/Rosio C.

23 Between March 2 and March 5, 2011, ICON and FRANCO at ICON’s office,
24 solicited from and received a total of \$4,100, \$3,000 in cash and \$1,000 by check in advance
25 fees for credit analysis and repair services from Augustin/Rosio C. pursuant to ICON’s “Rent To
26 Own Program — Bad Credit Is OK” ICON and promised to show properties eligible for the
Rent to Own Program from a period of six months from the date of the Agreement, to wit,

1 March 5, 2011. To date no credit repair, property showing, or refund of advance fees paid have
2 been made.

3 20.

4 Bernard/Christine DLC.

5 On or about August 9, 2011, Bernard DLC. ICON, FRANCO, and CUDA
6 solicited from and received a total of paid \$7,000 to \$1,200 in cash and \$5,800 by check as an
7 advance fees for credit analysis and repair services from Bernard/Christine DLC. pursuant to
8 ICON's "Rent To Own Program – Bad Credit Is OK" ICON and promised to show properties
9 eligible for the Rent to Own Program from a period of six months from the date of the
10 Agreement, to wit, August 9, 2011. To date no credit repair, property showing, or refund of
11 advance fees paid have been made.

12
13 Table: LOP/LOB/BCR/RTO Program Services - Audit Related

14

15 Complainant	16 Payment Date	17 Advance Fee	18 Program	19 Agent
20 Praparsi S.	21 September 23, 2010	22 \$ 6,995	23 BCR	24 FRANCO
25 Ibirnoke A.	26 September 7, 2010	\$ 6,845	LOP	FRANCO
Lennard H	July 7, 2011	\$ 3,500	RTO	FRANCO/CUDA
Total		\$17,340		

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3 Table: LOP/LOB/BCR/RTO Program Services – Non-Audit Related

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Complainant	Payment Date	Advance Fee	Program	Agent
Augustin C.	March 2, 2011	\$ 4,100	LOP	FRANCO
Raudel L.	January 27, 2011	\$ 3,500	BCR/RTO	FRANCO
C.de la Cruz	September 23, 2010	\$ 6,000	BCR/LOP	FRANCO/CUDA
Total		\$13,600		
Both Tables		\$30,940		

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13 LOP/LOB/BCR/RTO Violations and Disciplinary Statutes and Regulations

14 21.

15 The conduct of Respondents ICON, FRANCO and CUDA violated the Code and
16 the Regulations as set forth below.

17 15(a) Code Section 10176(a) for substantial misrepresentation of
18 LOP/LOB/RTO/BCR services contracted and paid, but not provided or refunded.

19 15(b) Code Section 10176(i) for conversion, fraud and dishonest dealing.

20 15(c) Code Section 10177(g) for negligence.

21 15(d) Code Section 10085 and Regulation 2970.

22 15(e) Code Sections 10145 and 10146.

23 15(f) Code Sections 10145 and 10146.

24 15(g) Code Sections 10130 and 10176(i) (FRANCO) for performing acts
25 requiring a license before he was employed by ICON.
26

1 in violation of Code Section 10177(g) which constitutes cause for discipline of the real estate
2 license and license rights of said Respondents ICON and FRANCO pursuant to the provisions of
3 Code Section 10177(g).
4

5 25.

6 Code Section 10106 provides, in pertinent part, which in any order issued in
7 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the
8 administrative law judge to direct a licensee found to have committed a violation of this part to
9 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
10

11 26.

12 Code Section 10148(b) provides, in pertinent part the Commissioner of the
13 Bureau of Real Estate shall charge a real estate broker for the cost of any audit, if the
14 Commissioner has found in a final decision following a disciplinary hearing that the broker has
15 violated Code section 10145 or a regulation or rule of the commissioner interpreting said
16 section.

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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 all licenses and/or license rights of Respondents ICON REALTY LINK INC.,
4 JOEL FRANCO, and NICHOLAS J. CUDA, under the Real Estate Law (Part 1 of Division 4 of
5 the California Business and Professions Code) and for such other and further relief as may be
6 proper under other applicable provisions of law, including but not limited to restitution in
7 minimum amount of \$30,940.00, and costs of audit, investigation and enforcement.

8 Dated at Los Angeles, California.

9 this 10th day of March, 2014.

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11 
12 VERONICA KILPATRICK
13 Deputy Real Estate Commissioner
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21 cc: Icon Realty Link Inc.
22 Joel Franco
23 Nicholas J. Cuda
24 Veronica Kilpatrick
25 Audits – Godswill Keraoru
26 Sacto