

FILED

FEB 26 2018

BUREAU OF REAL ESTATE

By *W. Davis*

JUDITH B. VASAN, Counsel (SBN 278115)

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

*** * ***

In the Matter of the Accusation of)	No. H-40950 LA
)	
EXCEL FUNDING REAL ESTATE)	
SERVICES, INC, JEROLD ANTHONY)	<u>ACCUSATION</u>
SAUNDERS, individually and as designated)	
officer of Excel Funding Real Estate Services, Inc,)	
and VICTOR MANUEL GUTIERREZ,)	
)	
Respondents.)	

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, for cause of Accusation against EXCEL FUNDING REAL ESTATE SERVICES, INC, JEROLD ANTHONY SAUNDERS, individually and as designated officer of Excel Funding Real Estate Services, Inc, and VICTOR MANUEL GUTIERREZ ("Respondents") alleges as follows:

1.

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

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1 d. Respondent GUTIERREZ holds a MLO license endorsement, NMLS No.
2 341822, authorizing him to operate under Respondent EFRESI's company MLO endorsement,
3 NMLS No. 332480.

4 e. Respondent GUTIERREZ does not currently maintain any fictitious business
5 names under his real estate broker license.

6 REAL ESTATE ACTIVITY

7 6.

8 At all times relevant herein Respondent EFRESI was engaged in the business of,
9 acted in the capacity of, advertised or assumed to act as a real estate broker, within the meaning
10 of:

11 a. Code section 10131(a). by selling or offering to sell, buying or offering to buy,
12 soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, or negotiating
13 the purchase, sale or exchange of real property or a business opportunity ("real estate sales");
14 and

15 b. Code section 10131(b). by leasing or renting or offering to lease or rent, or
16 placing for rent, or soliciting listings of places for rent, or soliciting for prospective tenants, or
17 negotiating the sale, purchase or exchanges of leases on real property, or on a business
18 opportunity, or collecting rents from real property, or improvements thereon, or from business
19 opportunities ("leasing activity").

20 COMPLAINT

21 7.

22 On or about May 19, 2016, the Bureau received a complaint from consumer
23 S.L.¹ concerning Respondent GUTIERREZ' conduct during a real estate purchase transaction
24

25 _____
26 ¹ Initials are used in place of individual's full name to protect their privacy. Documents containing individual's
27 full name will be provided during the discovery phase of this case to Respondents and/or their attorney(s), after
service of a timely and proper request for discovery on Complainant's counsel.

1 involving 1350 Ronan Avenue, Wilmington, California ("Ronan Avenue property"). On or
2 about April 27, 2015, S.L. and her spouse J.L. ("Buyers"), and Respondent GUTIERREZ, on
3 behalf of Respondent EFRESI, executed a California Residential Purchase Agreement where
4 Respondent GUTIERREZ represented the buyers and the seller M.F. in a dual agency. In an
5 Additional Signature Addendum, a co-signer, F.R., was added. According to S.L., on April 27,
6 2015, Buyers gave Respondent GUTIERREZ a check for five-thousand dollars (\$5,000.00) for
7 the earnest money deposit when escrow was opened on the Ronan Avenue property. Buyers
8 also gave Respondent GUTIERREZ the following cash amounts totaling twenty-seven
9 thousand dollars (\$27,000.00) towards the purchase of the Ronan Avenue property:

<u>Date Received</u>	<u>Amount</u>
May 28, 2015	\$9,000.00 cash
June 8, 2015	\$9,000.00 cash
June 17, 2015	\$9,000.00 cash

14 8.

15 Buyers received a written receipt for each of the nine-thousand dollars
16 (\$9,000.00) they gave in cash to Respondent GUTIERREZ. According to Buyers, they did not
17 purchase the house and, as of May 19, 2016, Respondent GUTIERREZ did not refund them the
18 twenty-seven thousand dollars (\$27,000.00) that Respondent GURIERREZ received from
19 Buyers.

20 CAUSE FOR ACCUSATION

21 (AUDIT OF REAL ESTATE SALES ACTIVITY)

22 9.

23 On or about October 12, 2017, the Bureau completed an audit examination of
24 the books and records of Respondent EFRESI pertaining to the real estate activities described in
25 Paragraph 6a above. The audit examination covered the period of time from January 1, 2015
26 through June 30, 2017 ("audit period"), and was performed between July 13, 2017 and October
27 5, 2017. The audit examination was limited to Respondent EFRESI's real estate sales activity

1 only. The audit examination revealed violations of the Code and the Regulations as set forth in
2 the following paragraphs, and more fully discussed in Audit Report No. LA 160207 and the
3 exhibits and work papers attached to said audit report.

4 10.

5 An entrance conference was held on July 13, 2017. The auditor met with
6 Respondent SAUNDERS and Baldwin at EFRESI's main office address. According to
7 Respondent SAUNDERS and Baldwin, Respondent EFRESI closed approximately thirty-one
8 (31) real estate sales transactions totaling \$18,966,200.00 representing buyers and closed
9 twenty-eight (28) real estate sales transactions totaling \$22,115,000.00 representing the sellers
10 during the audit period. In addition, Respondent EFRESI performed ten (10) leasing activities
11 totaling \$22,995.00 during the audit period. According to Respondent SAUNDERS and
12 Baldwin, Respondent EFRESI did not maintain any trust account for the leasing activity during
13 the audit period.

14 Violations of the Real Estate Law

15 11.

16 The audit examination revealed violations of the Code and the Regulations, as
17 set forth in the following paragraphs, and more fully discussed in Audit Report No. LA 160207
18 and the exhibits and work papers attached to the audit report:

19 (a) Disclosure of Licensed Status in Advertising (Code section 10140.6(b)).

20 Respondent EFRESI and its real estate licensees failed to disclose its NMLS license on the
21 Residential Purchase Agreement for the following real estate transactions in violation of Code
22 section 10140.6(b):

23 ///

24 ///

25 ///

26 ///

27 ///

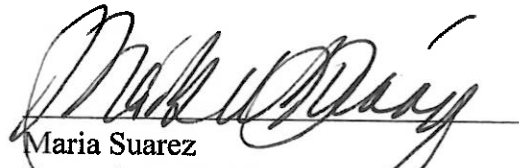
	<u>Property</u>	<u>Agent</u>	<u>Bureau No.</u>	<u>NMLS No.</u>
1				
2	(1) 331 W. 18 th Street	"Victor Guitierrez"	01096506	341822
3	(2) 835 Hawaii Avenue	"Victor Guitierrez"	01096506	341822
4	(3) 6704 Via Canada,	"Vince Iacono"	01031745	266501
5	(4) 840 W. 6th Street	"Victor Guitierrez"	01096506	341822
6	(5) 2445 Rue Le Charlene	"Frances Baldwin"	01194971	330182
7	(6) 2409 Steed Court	"Frances Baldwin"	01194971	330182

8 **(b) Use of False or Fictitious Name (Code section 10159.5 and Regulations**
9 **section 2731)**. Respondent EFRESI conducted real estate activities using the unlicensed
10 fictitious business name "Excel Funding R.E.S. Inc" in violation of Code section 10159.5 and
11 Regulations section 2731. As of October 5, 2017, Respondent EFRESI did not have any
12 fictitious names (DBAs) registered with the Bureau. The fictitious name "Excel Funding R.E.S.
13 Inc" was listed on the following forms: Residential Purchase Agreement, Disclosure Regarding
14 Real Estate Agency Relationship, Possible Representation of More Than One Buyer or Seller,
15 Statewide Buyer and Seller Advisory, Agent Visual Inspection Disclosure and Seller Financing
16 Addendum and Disclosure.

17 **(c) Handling of Trust Funds (Code section 10145(c))**. Respondent
18 GUTIERREZ, while employed as a Broker Association for Respondent EFRESI, received a
19 total of \$27,000.00 in cash from Buyers as alleged in Paragraphs 7 and 8 above. In a declaration
20 dated May 24, 2016, executed by Respondent GUTIERREZ, Buyers asked Respondent
21 GUTIERREZ to keep the cash until it was needed to close escrow on the Ronan Avenue
22 property. Respondent GUTIERREZ told Buyers that he could not keep the \$27,000.00 in cash
23 for Buyers, but that he would have a friend keep the money for them. According to Respondent
24 GUTIERREZ, Buyers demanded their money back when Buyers could no longer purchase the
25 Ronan Avenue property. Respondent GUTIERREZ informed Buyers that he needed time to get
26 their money from his friend who was holding Buyers' money and was out of the country until
27 June 1, 2016. Respondent GUTIERREZ, who accepted trust funds from Buyers on behalf of

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of
2 this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
3 against all the licenses and/or license rights of Respondents EXCEL FUNDING REAL
4 ESTATE SERVICES, INC, JEROLD ANTHONY SAUNDERS, individually and as designated
5 officer of Excel Funding Real Estate Services, Inc, and VICTOR MANUEL GUTIERREZ
6 under the Real Estate Law, for the costs of investigation and enforcement as permitted by law,
7 for the cost of the audit, and for such other and further relief as may be proper under other
8 applicable provisions of law.

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10 Dated at Los Angeles, California this 24 day of February, 2018.

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15 Maria Suarez
16 Supervising Special Investigator
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23

24 cc: EXCEL FUNDING REAL ESTATE SERVICES, INC
25 JEROLD ANTHONY SAUNDERS
26 VICTOR MANUEL GUTIERREZ
27 Maria Suarez
Sacto.
Audits – Benilda Emery