FILED

SEP 27 2011

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of CHRISTOPHER VINCENT HUSSAIN, and WEFIT2U, INC., Respondents.	NOS. H-5505 SAC H-5438 SAC OAH NOS. 2010110726 2010090849

ORDER STAYING EFFECTIVE DATE

On September 8, 2011, a Decision was rendered in the above-entitled matter to become effective on September 30, 2011.

On September 27, 2011, Respondent petitioned for reconsideration of the Decision of September 8, 2011.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of September 8, 2011, shall become effective at 12 o'clock noon on October 30, 2011.

DATED: 9/27/2011

BARBARA J. BIGBY
Acting Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

FILED
OCT 28 2011
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of WEFIT2U, INC., and CHRISTOPHER VINCENT HUSSAIN, Respondents.	DRE No. H-5505 SAC OAH No. 2010110726
In the Matter of the Accusation of CHRISTOPHER VINCENT HUSSAIN, Respondent.	DRE No. H-5438 SAC OAH No. 2010090849

ORDER DENYING RECONSIDERATION

On September 8, 2011, a Decision was rendered in the above-entitled matter. The Decision was to become effective September 30, 2011.

On September 27, 2011, Respondent petitioned for reconsideration of the Decision of September 8, 2011.

I have given due consideration to the petition of Respondent for reconsideration. I find no good cause to reconsider the Decision of September 8, 2011, and reconsideration is hereby denied.

IT IS HEREBY ORDERED 10/28/2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner

WAYNE S. BELL
Chief Counsel

FILED
SEP - 9 2011
DEPARTMENT OF REAL ESTATE
By

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusations Against CHRISTOPHER VINCENT HUSSAIN and WEFIT2U, INC., Respondents.	)	NOS. H-5505 SAC H-5438 SAC OAH NOS. 2010110726 2010090849

DECISION

The Proposed Decision dated August 4, 2011, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes the real estate licenses and/or license rights.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondents.

This Decision shall become effective at 12 o'clock noon on SEP 30 2011

IT IS SO ORDERED 9/8/11.

BARBARA J. BIGBY
Acting Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusations Against:	Case Nos. H-5505 SAC H-5438 SAC
CHRISTOPHER VINCENT HUSSAIN AND WEFIT2U, INC. Respondents.	OAH Nos. 2010110726 2010090849

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard these consolidated matters on May 23, 2011, in Sacramento, California.

Richard K. Uno, Real Estate Counsel, represented Tricia D. Sommers (complainant), Deputy Real Estate Commissioner of the State of California.

Christopher Vincent Hussain represented himself and WeFit2U, Inc. (collectively, respondents).

Evidence was received and the record remained open to allow the parties to submit closing briefs.[1] On June 3, 2011, respondents' request for a three-week extension of the deadline for submitting their closing brief was granted, over complainant's objection.[2] Therefore, respondents' brief was due July 1, 2011,

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[1] The parties were asked to submit closing arguments in writing and to brief the legal issue of whether an employee or subsidiary of a national bank is exempt from California's Real Estate Law (Bus. & Prof. Code, § 10000 et seq). The parties were specifically advised that the post-hearing briefing was "not a chance to produce new facts, so if that is the route we end up going, I want to make it clear that you cannot introduce new evidence, and if you do, it will be stricken, so that is an option that we can do if it is necessary."

[2] Respondents justified their request, in part, by explaining that more time was needed to obtain additional evidence. The order granting the extension stated, in part: "The record was not left open to receive additional evidence and no additional evidence shall be submitted. . . ."

and complainant's brief was due July 15, 2001. Respondents' letter brief was filed July 5, 2011,[3] and marked as Exhibit Q. Complainant's Closing Argument was filed July 15, 2011, and marked as Exhibit 19. Complainant's objection to respondents' brief as being untimely is overruled. Her objection to respondents' improper attempt to introduce the evidence attached to their brief is sustained. All attached exhibits, footnotes 5 and 7 through 9, and all references to the attached exhibits are stricken from respondents' brief. The matter was submitted for decision July 15, 2011.

SUMMARY

Between August 2008 and May 2010, Mr. Hussain provided loan modification services, both personally and through employees he hired for his various business entities which he used as his alter egos. In providing such services, he committed numerous violations of the Real Estate Law, including trust fund violations, collecting advance fees without first obtaining a "no objection" letter, and fraud. Cause exists to discipline Mr. Hussain and WeFit2U, Inc.'s, respective broker licenses. The evidence demonstrates that outright revocation of both licenses is necessary in order to adequately protect the public.

FACTUAL FINDINGS

Jurisdiction

1. Mr. Hussain argued that the National Bank Act of 1864 (12 U.S.C. § 38 et. seq.), which purportedly allows employees and subsidiaries of national chartered banks (and subsidiaries of such banks) to perform loan modifications without having to comply with state licensing laws, preempts California's Real Estate Law (Bus. & Prof. Code, § 10000 et seq.). Therefore, he argued that he and WeFit2U, Inc., are not subject to discipline because they were employed by, or acting as a subsidiary of, a national chartered bank when they performed loan modifications. But his argument suffers from a fatal flaw – a lack of evidentiary support. The record is devoid of any evidence that WeFit2U, Inc., was ever employed by, or operating as a subsidiary of, a national chartered bank. Nor is there any evidence that Mr. Hussain was acting within the scope of his employment by a national chartered bank when he performed the loan modifications which are the subject of this action. In fact, his hearing testimony established that he was not:

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[3] The brief was received by the Office of Administrative Hearings by facsimile on July 1, 2011, at 5:26 p.m. The brief was filed July 5, 2011, the next business day. (Cal. Code Regs., tit. 1, § 1006, subd. (h) ["Papers received after regular business hours are deemed filed on the next regular business day."])

> I contacted the owner of Eagle Nationwide and said, "Hey, we are getting ready to do this. Is this okay with you? Can we put the Eagle Nationwide on this?"
>
> Well, I don't personally want to do it. We might refer you over some people, but go with a different name. Come up with a different name."

Mr. Hussain's jurisdictional argument is rejected.

2. On November 20, 2006, the Department of Real Estate (Department) issued a Real Estate Salesperson License (salesperson license) to Mr. Hussain. From January 1, 2008, through March 11, 2009, Mr. Hussain's employing broker was Pinnacle Real Estate Services Group, Inc. His employing broker was Intense Mortgage, Inc., from March 12, 2009, until his salesperson license was terminated on August 2, 2009. There is no history of prior discipline of the salesperson license.

3. On August 3, 2009, the Department issued Real Estate Broker License No. B01781678 (broker license) to Mr. Hussain. The broker license expires August 2, 2013, unless renewed or revoked. The Department filed a Desist and Refrain Order on November 8, 2010, which prohibits Mr. Hussain from employing and/or compensating any person for performing any acts for which a California real estate license is required unless and until such person has obtained the necessary license. There is no other history of prior discipline of the broker license.

4. On February 23, 2010, the Department issued Corporate Broker License C01872276 (corporate license) to WeFit2U, Inc. At the hearing, however, the parties stipulated that if Mr. Hussain's jurisdictional argument discussed in Factual Finding 1 is rejected, then cause to discipline respondents' respective real estate licenses exists based on Factual Findings 8 through 16, individually and collectively. Included in the stipulation is the advance fee respondents collected from Safaa Krayem and Manna Tarek on December 22, 2008. (Factual Finding13(d).) WeFit2U, Inc., had to have been licensed as of that date to be subject to discipline. (Bus. & Prof. Code, § 10177, subd. (d).) Therefore, respondents conclusively admitted that WeFit2U, Inc., was issued the corporate license no later than December 22, 2008. (See, e.g., *Horn v. Atchison, Topeka & Santa Fe Railroad Co.* (1964) 61 Cal.2d 602, 605 [defense counsel's opening statement telling the jury to give the plaintiff some recovery was an admission that removed the issue of liability from consideration]; *Gonzales v. Pacific Greyhound Lines* (1950) 34 Cal.2d 749, 754-758 [a party's stipulation to facts constitutes a judicial admission].) Any evidence to the contrary cannot be considered. (See, e.g., *Palmer v. City of Long Beach* (1948) 33 Cal.2d 134, 141-142 ["Unless the trial court . . . permits a party to withdraw from a stipulation, it is conclusive upon the parties, and the truth of the facts contained therein cannot be contradicted."]; *Gelfo v. Lockheed Martin Corp.* (2006) 140

Cal.App.4th 34, 48["A judicial admission is a party's unequivocal concession of the truth of the matter, and removes the matter as an issue in the case."])

Mr. Hussain has been the designated officer for the corporate license since the license was issued. Both the corporate license and the designation of officer expire February 22, 2014, unless renewed or revoked. At all times relevant herein, Mr. Hussain was the sole officer, director, and shareholder of WeFit2U, Inc. The Department filed a Desist and Refrain Order on November 8, 2010, which prohibits WeFit2U, Inc., from employing and/or compensating any person for performing any acts for which a California real estate license is required unless and until such person has obtained the necessary license. There is no other history of prior discipline of the corporate license.

5. On August 5, 2010, complainant, acting solely in her official capacity as a Deputy Real Estate Commissioner of the State of California, filed an accusation seeking to discipline Mr. Hussain's broker license based on a Department audit of his records. (Case No. 5438) On November 10, 2010, complainant, acting solely in her official capacity as a Deputy Real Estate Commissioner of the State of California, filed a second accusation seeking to discipline Mr. Hussain's broker license and the corporate license based on respondents' provision of loan modification services. (Case No. 5505.) The two matters were consolidated for hearing on November 29, 2010.

6. At the hearing, complainant's motion to amend the accusation filed in Case No. 5438 by adding "WEFIT2U, INC." after each reference to "HUSSAIN" in the accusation was granted, over respondents' objection.

7. From August 2008 until at least May 17, 2010, Mr. Hussain, personally and through employees he hired for his various business entities, provided loan modification services. He used the business names Avalon Mortgage, LLC; WeFit2U, LLC; WeFit2U, Inc.; and WeFit2U, interchangeably and as his alter egos. Mr. Hussain provided services under WeFit2U, Inc., as early as December 2008, when he provided loan modification services to Safaa Krayem and Manna Tarek.

All together, Mr. Hussain initiated and processed 160 loan modifications. He received advance fees in the total sum of $394,498.10. As of May 17, 2010, five loan modifications were still being processed.

Trust Fund Violations

8. From November 5, 2008, through April 30, 2010, Mr. Hussain maintained Account Number 23503-6820 in the name of "WeFit2U, LLC" at Bank of America for his real estate activities, including those conducted on behalf of WeFit2U, Inc. (Account No. 1.) The account has never been designated as a trust account despite the fact that trust funds were deposited into the account. The sole

signatories on the account have always been Mr. Hussain and Toni A. Hussain. Ms. Hussain has never been licensed by the Department in any capacity and has never had fidelity bond coverage.

Mr. Hussain also maintained Account No. 23506-40912 in the name of "Avalon Mortgage LLC dba Avalon Marketing" at Bank of America for his real estate activities, including those conducted on behalf of WeFit2U, Inc. (Account No. 2.) The account has never been designated as a trust account despite the fact that trust funds were deposited into the account. The account was closed August 28, 2009.

Mr. Hussain maintained no other bank accounts or depositories for trust funds he received for his real estate activities, including those conducted on behalf of WeFit2U, Inc., during the period of August 1, 2008, through April 30, 2010.

9. At no time did Mr. Hussain keep "control records" for trust funds respondents received from and on behalf of their principals. "Control records" keep track of trust funds held by a broker by itemizing all funds received and disbursed. For trust funds received, the control records must show the date they were received, from whom they were received, and the amount received. For funds disbursed, the records must show the date of disbursement, the amount disbursed, the check number, and the name of the payee. For any trust funds not deposited in an account, the records must show the name of the depository and the date the funds were forwarded to the depository. The records must show a running total of all trust funds held.

10. At no time did Mr. Hussain keep a "separate record" for each beneficiary or transaction related to the trust funds respondents received from and on behalf of their principals. A "separate record" contains information similar to a control record, except it pertains to a specific beneficiary. For funds received, the separate record shows the date and amount of each deposit. When funds are disbursed, the record shows the date, check number, and amount of each disbursement. If the account in which the trust funds are deposited earns interest, the separate record must show the dates and amounts of interest earned and credited to the account. The record must show the balance of trust funds held for the particular beneficiary after the posting of each transaction.

11. At no time did Mr. Hussain reconcile the trust funds respondents held on behalf of their principals. A "reconciliation" involves the broker comparing the total amount of trust funds received during any given month with the total amount disbursed during the same month. As of March 25, 2010, Account No. 1 had a negative balance of $90.66.

12. Between November 2, 2009, and March 11, 2010, Mr. Hussain commingled $67,911 of his own money with the trust funds he deposited in Account No. 1.

Advance Fee Violations

13. On August 27, 2009, the Department issued Mr. Hussain a "no objection" letter authorizing the collection of an advance fee from clients. However, respondents had already collected advance fees for loan modification services from the following clients on the following dates:

a. Svitlana Anishchenko – September 23, 2008;

b. Ricardo Mejia – November 3, 2008;

c. Dale and Gail Stone – December 10, 2008;

d. Safaa Krayem and Manna Tarek – December 22, 2008;

e. Jose and Juanita Morales – March 2, 2009; and

f. Mitchell Smith – April 10, 2009

14. Respondents failed to deposit the advance fees they collected from Svitlana Anishchenko, Ricardo Mejia, Dale and Gail Stone, Safaa Krayem and Manna Tarek, Jose and Juanita Morales, Mitchell Smith, Norris Song, Phillip Song, Seyed Ahmad, Silas and Julie Mills, and Robert Brower into a trust account with a bank or other recognized depository.

15. Respondents failed to provide Svitlana Anishchenko, Ricardo Mejia, Dale and Gail Stone, Safaa Krayem and Manna Tarek, Jose and Juanita Morales, Mitchell Smith, Norris Song, Phillip Song, Seyed Ahmad, Silas and Julie Mills, and Robert Brower with quarterly verified accountings of the advance fees received from them.

Unlicensed Activity

16. Neither WeFit2U, LLC, nor Avalon Mortgage, LLC, has ever been licensed in any capacity by the Department. Neither entity has been registered with the Department as a fictitious business. Nonetheless, Mr. Hussain provided loan modification services through those entities to Svitlana Anishchenko, Ricardo Mejia, Dale and Gail Stone, Jose and Juanita Morales, Silas and Julie Mills, and Robert Brower prior to obtaining his broker license on August 3, 2009.

Unauthorized Employment

17. In September 2008, Mr. Hussain hired Lisa Willett as an employee of WeFit2U, Inc., to solicit lenders and borrowers for loans secured directly or collaterally by liens on real property and to arrange, negotiate, process, and

consummate such loans on behalf of respondents. He testified as follows about why he hired her:

> Well, Lisa Willett came in and told me her story, how she has all this experience in the loan modification industry, in lending. She has worked for big and small banks, been in for 15 years. The biggest thing is she did loan modifications for herself. At that time I hadn't seen anybody that could do a loan modification because they all took forever, so that was my girl right there. I signed her up on a 1099. I didn't want anybody underneath me. . . .

While Ms. Willett was paid as an independent contractor, she was actually an employee. Mr. Hussain's argument to the contrary is not supported by the weight of the evidence. (See, *Tieberg v. Unemployment Insurance Appeals Board* (1970) 2 Cal.3d 943, 952 [an employment agreement is not conclusive on whether the person is an employee or independent contractor].) For instance, the employment agreement she was required to sign gave WeFit2U, Inc., the right to control her work hours.

> Though ILP is not an employee, it is expected that ILP be available by phone, e-mail, and/or IM and working during normal business hours in order to ensure files in process are being processed with the utmost urgency. Additional time put into processing files will be needed to ensure that files submitted do not take more than 24 hours to submit. . . .

(*Id.*, at pp. 946-947 ["The principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired. (Citation.) If control may be exercised only as to the result of the work and not the means by which it is accomplished, then an independent contractor relationship is established. (Citation.)"])

Misrepresentations

18. At all times relevant herein, Mitchell Smith owned real property located at 3281 Wood Leigh Lane, Cameron Park, California. In March 2009, he became increasingly worried about his ability to pay the monthly payments for the two home loans secured by his real property. He conducted an internet search for loan modification companies and discovered LoanModUS.com. He spoke with Jason Landreth, senior vice president of operations for LoanModUS.com. Mr. Smith told Mr. Landreth that he was interested in modifying his two home loans but was concerned with the fact that LoanModUS.com was located in Las Vegas. Mr. Landreth referred Mr. Smith to WeFit2U, Inc., and Ms. Willett.

19. Ms. Willett called Mr. Smith and offered to obtain loan modifications for an advance fee of $2,600. Mr. Smith asked Ms. Willett whether the loan modification process was handled by attorneys, and she told him that WeFit2U, Inc., was an "attorney-backed" firm. He then asked whether Ms. Willett was an attorney because she was so knowledgeable about the process. She said she was. She also told him that she had a California real estate license.

20. In reliance on Ms. Willett's representations and believing that she could obtain a modification of his home loans, Mr. Smith paid the advance fee on April 10, 2009, by electronic bank transfer. He also signed a Loss Mitigation Servicing Agreement, whereby he appointed WeFit2U, Inc., as his representative in negotiations and correspondence with the lenders.

21. Between April 10 and July 9, 2009, Ms. Willett provided Mr. Smith with periodic updates assuring him that everything was okay with his loan modification applications. Each of Ms. Willett's representations were false, she knew they were false at the time she made them, and she made those false representations to entice Mr. Smith into using WeFit2U, Inc.'s, loan modification services. The true facts were that WeFit2U, Inc., did not use attorneys to negotiate with the lenders, Ms. Willett was not an attorney licensed in the State of California, she has never been licensed by the Department, and Mr. Smith's first lender refused to negotiate a potential loan modification unless he paid $38,000 to bring his loan current. His home was ultimately repossessed by the lender.

Evidence in Mitigation, Aggravation, and Rehabilitation

22. The Department is required to consider all competent evidence of rehabilitation when deciding whether a licensee's conduct warrants the imposition of discipline and, if so, what form of discipline is appropriate. (Bus. & Prof. Code, § 482.) Mr. Hussain testified that he and Safaa Krayem and Manna Tarek reached an agreement regarding the refund of a portion of the advance fee they had paid respondents. He also testified that he had refunded the entire advance fee Dale and Gail Stone had paid respondents. It is clear from his testimony that he does not believe he did anything wrong by collecting the advance fees without a "no objection" letter since he refunded a portion of what he collected. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation."]; see also, See, *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402 ["Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee."]) Besides, the refunds were given only after the clients had sued Mr. Hussain and one of his business entities, and the Stones had to take steps to enforce their judgment before he agreed to refund the advance fee.

23. As discussed below, cause exists to discipline both Mr. Hussain and WeFit2U, Inc.'s, real estate licenses. The evidence demonstrates that his violations of the Real Estate Law were particularly egregious. The evidence also establishes that he has not begun his journey towards rehabilitation and that he poses a danger to the public. Therefore, the outright revocation of his license is critical in order to protect public safety, health, and welfare. The severity and number of his violations establish that he cannot be trusted with a restricted license. And since he is the designated officer on the corporate license and the sole officer, director, and shareholder of WeFit2U, Inc., it is imperative that the corporate license be revoked so that he cannot continue his illegal conduct under the guise of a fictitious business name.

LEGAL CONCLUSIONS

I. *Applicable Law*

A. *Trust Fund Violations*

1. California Real Estate Law requires a real estate broker to maintain a trust fund account whenever that broker is going to receive funds belonging to others. Business and Professions Code section 10145, subdivision (a), provides:

> (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds. . . .

The trust fund account must be in the name of the broker or the fictitious business under which the broker is licensed. (Cal. Code Regs., tit. 10, § 2832, subd. (a).)

2. The law limits who may be a signatory on a trust fund account to the following:

> (1) A salesperson licensed to the broker.
>
> (2) A person licensed as a broker who has entered into a written agreement pursuant to Section 2726 with the broker.

(3) An unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

(Cal Code Regs., tit. 10, § 2834, subd. (a).)

3. Real estate brokers are required to keep "control records" for their trust accounts.

Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

(1) Date trust funds received.

(2) From whom trust funds received.

(3) Amount received.

(4) With respect to funds deposited in an account, date of said deposit.

(5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.

(6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.

(7) Daily balance of said account. . . .

(Cal. Code Regs., tit. 10, § 2831, subd. (a).)

4. Real estate brokers are required to keep "separate beneficiary records" as well.

A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This

record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.

(2) Amount of deposit.

(3) Date of each related disbursement.

(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

(Cal. Code Regs., tit. 10, § 2831.1, subd. (a).)

5. Real estate brokers are required to reconcile their "separate beneficiary records" with their "control records" on at least a monthly basis. (Cal. Code Regs., tit. 10, § 2831.2.)

6. Real estate brokers may not commingle their own personal funds with trust funds. (Bus. & Prof. Code, § 10176, subd. (e).

B. *Advance Fees*

7. A real estate broker who proposes to collect an advance fee is required to get the approval of the Real Estate Commissioner at least 10 days prior to advertising, promoting, soliciting, or negotiating an agreement calling for the payment of an advance fee. (Bus. & Prof. Code, § 10085; Cal. Code Regs., tit. 10, § 2970, subd. (a).)

8. Any advance fee collected must be deposited into a trust fund account. Business and Professions Code section 10146, provides:

> Any real estate broker who contracts for or collects an advance fee from any other person, hereinafter referred to as the "principal," shall deposit any such amount or amounts, when collected in a trust account with a bank or other recognized depository. Such funds are trust funds

> and not the funds of the agent. Amounts may be withdrawn therefrom for the benefit of the agency only when actually expended for the benefit of the principal or five days after the verified amounts mentioned hereinafter have been mailed to the principal. . . .

9. Real estate brokers are required to provide an accounting of all advance fees received to each principal from whom the advance fee was received. Business and Professions Code section 10146 states, in relevant part:

> . . . The commissioner may issue such rules and regulations as he or she deems necessary to regulate the method of accounting, and to accomplish the purpose of the provisions of this code relating to advance fees including, but not limited to, establishing forms for an determining information to be included in such accounting. Each principal shall be furnished a verified copy of such accountings at the end of each calendar quarter and when the contract has been completely performed by the licensee. The commissioner shall be furnished a verified copy of any account or all accounts on his or her demand therefor. . . .

The accounting must include the following:

> Each verified accounting to a principal or to the commissioner as required by Section 10146 of the Code shall include at least the following information:
>
> (a) The name of the agent.
>
> (b) The name of the principal.
>
> (c) Description of the services rendered or to be rendered.
>
> (d) Identification of the trust fund account into which the advance fee has been deposited.
>
> (e) The amount of the advance fee collected.
>
> (f) The amount allocated or disbursed from the advance fee for each of the following:

(1) In providing each of the services enumerated under (c) above.

(2) Commissions paid to field agents and representatives.

(3) Overhead costs and profit.

(g) In cases in which disbursements has been made for advertising, a copy of the advertisement, the name of the publication, the number of the advertisements actually published and the dates that they were carried.

(h) In the case of an advance fee for the arrangement of a loan secured by a real property or a business opportunity, a list of the names and addresses of the persons to whom information pertaining to the principal's loan requirements were submitted and the dates of the submittal.

(Cal. Code Regs., tit. 10, § 2972.)

C. *Fictitious Business Name*

10. A broker who intends to conduct business under a fictitious business name must register that name with the Department. (Bus. & Prof. Code, § 10159.5.)

D. *Unlicensed Activity*

11. It is unlawful for any person to engage in any activity for which a real estate license is required without first obtaining such license. (Bus. & Prof. Code, § 10130.) Performing loan modifications is an activity for which a real estate license is required. (Bus. & Prof. Code, § 10131, subd. (d).)

E. *Unlawful Employment*

12. At all times relevant to this action, Business and Professions Code section 10137 provided, in relevant part:

It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesman licensed under the broker employing or compensating him; provided, however, that a licensed

real estate broker may pay a commission to a broker of another State. . . .[4]

F. *Broker Supervision*

13. A real estate broker is required by law to "exercise reasonable supervision over the activities of his or her salespersons. . . ." (Cal. Code Regs., tit. 10, § 2725.) With regard to corporate brokers, Business and Professions Code section 10159.2, subdivision (a), states:

> The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

II. *Cause for Discipline*

14. A broker license may be disciplined if the broker willfully disregarded or violated the Real Estate Law or any rules or regulations adopted pursuant to such law. (Bus. & Prof. Code, § 10177, subd. (d).) Cause exists to discipline Mr. Hussain's broker license because he willfully disregarded or violated the Real Estate Law when he engaged in the following acts, each one of which constitutes sufficient cause:

a. Mr. Hussain did not maintain a trust account in his name or WeFit2U, Inc.'s, name (Factual Finding 8), a violation of Business and Professions Code section 10145, subdivision (a)(1), and California Code of Regulations, title 10 section 2832, subdivision (a), as discussed in Legal Conclusion 1;

b. Mr. Hussain allowed Tonia A. Hussain to be a signatory on Account No. 1 even though she was not licensed by the Department and did not have fidelity bond coverage. (Factual Finding 8.) This violated Code of Regulations, title 10 section 2834, subd. (a), as discussed in Legal Conclusion 2;

c. Mr. Hussain failed to keep control records for trust funds respondents received from and on behalf of their principals (Factual Finding 9), a violation of California Code of Regulations, title 10 section 2831, subdivision (a), as discussed in Legal Conclusion 3;

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[4] The subsequent amendments to the statute are irrelevant. (Stats. 2010, ch. 287 (S.B. 1137), § 1.)

d. Mr. Hussain failed to keep separate records for trust funds respondents received from and on behalf of their principals (Factual Finding 10), a violation of California Code of Regulations, title 10 section 2831.1, subdivision (a), as discussed in Legal Conclusion 4;

e. Mr. Hussain never reconciled the separate records with the control records (Factual Finding 11), a violation of California Code of Regulations, title 10 section 2831.2 as discussed in Legal Conclusion 5;

f. As of March 25, 2010, Account No. 1 had a negative balance of $90.66 (Factual Finding 11), a violation of Business and Professions Code 10145, subdivision (a)(1), as discussed in Legal Conclusion 1;

g. Between November 2, 2009, and March 11, 2010, Mr. Hussain commingled $67,911 of his own money with the trust funds deposited in Account No. 1 (Factual Finding 12), a violation of Business and Professions Code section 10176, subdivision (a), as discussed in Legal Conclusion 6;

h. Mr. Hussain collected an advance fee from Svitlana Anishchenko, Ricardo Mejia, Dale and Gail Stone, Safaa Krayem and Manna Tarek, Jose and Juanita Morales, and Mitchell Smith prior to receiving a "no objection" letter from the Department (Factual Findings 13(a)-13(f)), a violation of Business and Professions Code section 10085 and California Code of Regulations, title 10 section 2970, subdivision (a), as discussed in Legal Conclusion 7;

i. Mr. Hussain failed to deposit the advance fees collected from Svitlana Anishchenko, Ricardo Mejia, Dale and Gail Stone, Safaa Krayem and Manna Tarek, Jose and Juanita Morales, Mitchell Smith, Norris Song, Phillip Song, Seyed Ahmad, Silas and Julie Mills, and Robert Brower into a trust account with a bank or other recognized depository (Factual Finding 14), a violation of Business and Professions Code section 10146 as discussed in Legal Conclusion 8;

j. Mr. Hussain failed to provide Svitlana Anishchenko, Ricardo Mejia, Dale and Gail Stone, Safaa Krayem and Manna Tarek, Jose and Juanita Morales, Mitchell Smith, Norris Song, Phillip Song, Seyed Ahmad, Silas and Julie Mills, and Robert Brower with quarterly verified accountings of the advance fees received from them (Factual Finding 15), a violation of Business and Professions Code section 10146 and California Code of Regulations, title 10 section 2972 as discussed in Legal Conclusion 9;

k. Prior to obtaining his broker license, Mr. Hussain provided loan modification services to Svitlana Anishchenko, Ricardo Mejia, Dale and Gail Stone, Jose and Juanita Morales, Silas and Julie Mills, and Robert Brower under the business entities WeFit2U, LLC, and Avalon Mortgage, LLC, even though neither entity was licensed or registered with the Department (Factual Finding 16), a violation of

Business and Professions Code sections 10130 and 10159.5 as discussed in Legal Conclusions 10 and 11.

15. For the same reasons that cause exists to discipline Mr. Hussain's broker license pursuant to Business and Professions Code section 10177, subdivision (d), discussed in Legal Conclusion 14, cause also exists to discipline WeFit2U, Inc.'s, license pursuant to the same statute. (Factual Findings 4 and 8-16.) Mr. Hussain was the designated officer on the corporate license and was the sole officer, director, and shareholder of WeFit2U, Inc. (Factual Finding 4.)

16. A broker license may be disciplined if the broker "demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license." (Bus. & Prof. Code, § 10177, subd. (g).) The acts which constitute Mr. Hussain's willful disregard or violation of the Real Estate Law as discussed in Legal Conclusion 14 demonstrate that he was negligent or incompetent. Therefore, those acts, jointly and severally, constitute cause to discipline Mr. Hussain's license pursuant to Business and Professions Code section 10177, subdivision (g). (Factual Findings 8-16.)

17. For the same reasons that cause exists to discipline Mr. Hussain's broker license pursuant to Business and Professions Code section 10177, subdivision (g), discussed in Legal Conclusion 16, cause also exists to discipline WeFit2U, Inc.'s, license pursuant to the same statute. (Factual Findings 4 and 8-16.) Mr. Hussain was the designated officer on the corporate license and was the sole officer, director, and shareholder of WeFit2U, Inc. (Factual Finding 4.)

18. A broker license may be disciplined pursuant to Business and Professions Code section 10176, subdivision (e), if the broker commingles his own personal funds with trust funds as discussed in Legal Conclusion 6. Cause exists to discipline Mr. Hussain's license because he commingled $67,911 of his own personal funds with trust funds held in Account No. 1. (Factual Finding 12.)

19. For the same reasons that cause exists to discipline Mr. Hussain's broker license pursuant to Business and Professions Code section 10176, subdivision (e), discussed in Legal Conclusion 18, cause also exists to discipline WeFit2U, Inc.'s, license pursuant to the same statute. (Factual Findings 4 and 12.) Mr. Hussain was the designated officer on the corporate license and was the sole officer, director, and shareholder of WeFit2U, Inc. (Factual Finding 4.)

20. A broker license may be disciplined pursuant to Business and Professions Code section 10137 if the broker employs or compensates an unlicensed person for performing activities for which a license is required as discussed in Legal Conclusion 12. Cause exists to discipline Mr. Hussain's license because he hired Ms. Willett as an employee of WeFit2U, Inc., to provide loan modifications services. (Factual Finding 17.) A real estate license is required to perform such services.

(Bus. & Prof. Code, 10131, subd. (d).) Ms. Willett has never been licensed by the Department. (Factual Finding 21.) As the designated officer for the corporation (Factual Finding 4), Mr. Hussain is personally liable for any violations of the Real Estate Law committed by people acting on behalf of the corporation. (Bus. & Prof. Code, § 10159.2, subd. (a); see, *Holley v. Crank* (9th Cir. 2005) 400 F.3d 667, 671.)

21. For the same reasons that cause exists to discipline Mr. Hussain's broker license pursuant to Business and Professions Code section 10137 discussed in Legal Conclusion 20, cause also exists to discipline WeFit2U, Inc.'s, license pursuant to the same statute. (Factual Findings 4 and 17.) Mr. Hussain was the designated officer on the corporate license and was the sole officer, director, and shareholder of WeFit2U, Inc. (Factual Finding 4.)

22. A broker license may be disciplined pursuant to Business and Professions Code section 10176, subdivision (a), if the broker, while a licensee, makes "any substantial misrepresentation." Ms. Willett made numerous substantial misrepresentations to Mr. Smith when she told him that: 1) the loan modification process was handled by attorneys; 2) WeFit2U, Inc., was attorney backed; 3) she was a licensed attorney and had a real estate license; and 4) everything was okay with his loan modification applications. None of those representations were true. (Factual Findings 19-21.) Ms. Willett was an employee of WeFit2U, Inc., at the time she made those representations. (Factual Finding 17.) As such, WeFit2U, Inc., is liable for her misrepresentations (BAJI 13.30 [corporation may act only through its officers or employees]), and Mr. Hussain is responsible for the reasons discussed in Legal Conclusion 17. Therefore, cause exists to discipline his license pursuant to Business and Professions Code section 10176, subdivision (a).

23. For the same reasons that cause exists to discipline Mr. Hussain's broker license pursuant to Business and Professions Code section 10176, subdivision (a), discussed in Legal Conclusion 22, cause also exists to discipline WeFit2U, Inc.'s, license pursuant to the same statute. (Factual Findings 4 and 19-21.) Mr. Hussain was the designated officer on the corporate license and was the sole officer, director, and shareholder of WeFit2U, Inc. (Factual Finding 4.)

24. A broker license may be disciplined pursuant to Business and Professions Code section 10176, subdivision (c), for "a continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons." No cause exists to discipline Mr. Hussain's license pursuant to Business and Professions Code section 10176, subdivision (c), based on Ms. Willett's misrepresentations (Factual Findings 19-21) because she has never been a real estate agent or salesperson. (Factual Finding 21.)

25. For the same reasons that no cause exists to discipline Mr. Hussain's broker license pursuant to Business and Professions Code section 10176, subdivision (c), discussed in Legal Conclusion 24, no cause exists to discipline WeFit2U, Inc.'s, license pursuant to the same statute. (Factual Finding 21.)

26. A broker license may be disciplined pursuant to Business and Professions Code section 10176, subdivision (i), if the broker engages in "any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing." For the same reasons that cause exists to discipline Mr. Hussain's license pursuant to Business and Professions Code section 10176, subdivision (a), as discussed in Legal Conclusion 22, cause also exists to discipline his license pursuant to Business and Professions Code section 10176, subdivision (i). (Factual Findings 19-21.)

27. For the same reasons that cause exists to discipline Mr. Hussain's broker license pursuant to Business and Professions Code section 10176, subdivision (i), discussed in Legal Conclusion 26, cause also exists to discipline WeFit2U, Inc.'s, license pursuant to the same statute. (Factual Findings 4 and 19-21.) Mr. Hussain was the designated officer on the corporate license and was the sole officer, director, and shareholder of WeFit2U, Inc. (Factual Finding 4.)

28. A broker license may be disciplined pursuant to Business and Professions Code section 10177, subdivision (h), if the broker, "as the officer designated by a corporate broker license, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required." Mr. Hussain is the designated officer for WeFit2U, Inc.'s, broker license. (Factual Finding 4.) He failed to exercise reasonable supervision and control over the corporation's real estate activities in that advance fees were collected prior to receipt of a "no objection" letter from the Department (Factual Findings 13(d) and 13(f)) and he hired Ms. Willett, an unlicensed person, to perform loan modification services (Factual Finding 17). Therefore, cause exists to discipline Mr. Hussain's license pursuant to Business and Professions Code section 10177, subdivision (h).

29. For the same reasons that cause exists to discipline Mr. Hussain's broker license pursuant to Business and Professions Code section 10177, subdivision (h), discussed in Legal Conclusion 28, cause also exists to discipline WeFit2U, Inc.'s, license pursuant to the same statute. (Factual Findings 4, 13(d), 13(f), and 17.) Mr. Hussain was the designated officer on the corporate license and was the sole officer, director, and shareholder of WeFit2U, Inc. (Factual Finding 4.)

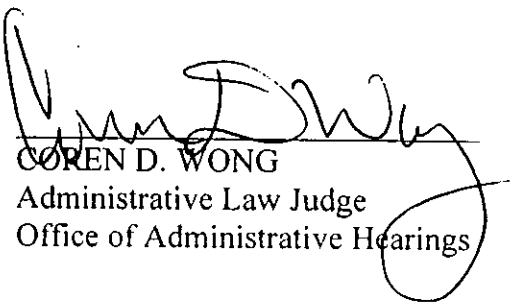
30. Cause exists to discipline Mr. Hussain's real estate license for the reasons discussed in Legal Conclusions 14, 16, 18, 20, 22, 26, and 28, collectively and severally. Cause also exists to discipline WeFit2U, Inc.'s, real estate license for the reasons discussed in Legal Conclusions 15, 17, 19, 21, 23, 27, and 29, collectively and severally. When all of the evidence is considered, there is no doubt that it is

necessary and appropriate to revoke Mr. Hussain and WeFit2U, Inc.'s, respective licenses as explained in Factual Findings 22 and 23.

ORDER

All licenses and licensing rights of respondents Christopher Vincent Hussain and WeFit2U, Inc., under the Real Estate Law are REVOKED.

DATED: August 4, 2011



COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

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FILED

AUG - 5 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of CHRISTOPHER VINCENT HUSSAIN, Respondent.	NO. H-5438 SAC ACCUSATION

The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner of the State of California, for Accusation against Respondent CHRISTOPHER VINCENT HUSSAIN (HUSSAIN), is informed and alleges as follows:

1

The Complainant makes this Accusation against Respondents in her official capacity.

2

HUSSAIN is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (the Code) as a real estate broker.

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3

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a loan brokerage business with the public wherein, on behalf of others, for compensation or in expectation of compensation, and claimed, demanded, charged, received, collected or contracted for an advance fee, Respondent solicited lenders and borrowers for loans secured directly or collaterally by liens on real property, and wherein Respondent arranged negotiated, processed, and consummated such loans.

4

Beginning on May 17, 2009, and continuing intermittently through May 19, 2009, an audit was conducted at HUSSAIN'S main office located on Walnut Street, Napa, California, where the auditor examined records for the period of August 1, 2008 through April 30, 2010 (the audit period).

5

While acting as a real estate broker as described in Paragraph 3, above, and within the audit period, HUSSAIN accepted or received funds in trust (trust funds) from or on behalf of owners, lessees and others in connection with the property management activities, deposited or caused to be deposited those funds into a bank account maintained by HUSSAIN, including: Bank of America, 2221 Douglas Boulevard, Roseville, California, Account No. 23503-68200, designated "WeFit2U, LLC", (Bank Account #1), and Bank of America, 2221 Douglas Boulevard., Roseville, California, Account No. 23506-40912, designated "Avalon Mortgage, LLC", (Bank Account #2), and thereafter from time to time made disbursement of said trust funds.

6

In the course of the activities described in Paragraph 3, in connection with the collection and disbursement of trust funds, HUSSAIN:

(a) Failed to designate Bank Account #1 and Bank Account #2 as trust accounts as required by Section 2832 of Chapter 6, Title 10, California Code of Regulations (Regulations);

(b) Allowed T. Hussain, an unlicensed, unbonded person to be a signatory on Bank Account #1, in violation of Section 2834 of the Regulations;

(c) Failed to maintain control records for Bank Account #1 and Bank Account #2, as required by Section 2831 of the Regulations;

(d) Failed to maintain separate records for Bank Account #1 and Bank Account #2, as required by Section 2831.1 of the Regulations;

(e) Failed to reconcile the control record with the separate beneficiary records for Bank Account #1 and Bank Account #2, at least once each month, as required under Section 2831.2 of the Regulations;

(f) Bank reconciliations for Bank Account #1 and Bank Account #2 could not be completed because HUSSAIN failed to keep control records and separate beneficiary records. As of March 25, 2010, a bank statement for Bank Account #1 revealed a shortage of $90.66, in violation of Section 10145 of the Code;

(g) Used Bank Account #1 and Bank Account #2 for business activities and the deposit of trust funds, thus commingled funds in violation of Section 2835 of the Regulations and Section 10176(e) of the Code;

(h) Collected advance fees from borrowers Svitlana Anishchenko, Ricardo Mejia, Gail Stone, Dale Stone, Jose Morales and Juanita Morales before receiving a No Objection letter from the Department, in violation of Section 2970 of the Regulations and Section 10085 of the Code;

(i) Failed to deposit advance fees collected from Norris Song, Phillip Song, Seyed Ahmad, Silas Mills and Robert Brower into a trust fund, as required by Section 10146 of the Code;

(j) Failed to provide quarterly verified accountings of advance fees to borrowers including, but not limited to those listed in sub paragraphs (h) and (i), above, as required by Section 2972 of the Regulations;

(k) Failed to register the fictitious business names WeFit2U, LLC and Avalon Mortgage, LLC with the Department as required by Section 10159.5 of the Code and

(l) Conducted real estate activity, including loan modifications for Svitlana Anishchenko, Ricardo Mejia, Gail Stone, Dale Stone, Jose Morales, Juanita Morales, Julie Mills, Silas Mills and Robert Brower, under those fictitious business names, indicated in sub paragraph (k), above, which were not registered with the Department, in violation of Section 10130 of the Code.

7

The acts and/or omissions of HUSSAIN as alleged above violate Sections 2831 (Control Records), 2831.1 (Separate Beneficiary Records), 2831.2 (Reconciliation of Records), 2832 (Designate Trust Account), 2834 (Unlicensed/Non-bonded Signatories), 2835 (Commingling), 2970 (Advance Fee Agreement) and 2972 (Verified Account) of the Regulations and of Sections 10085 (No Objection Letter), 10130 (Unlicensed Activity), 10145 (Trust Fund Handling), 10146 (Advance Fees/Trust Fund), 10159.5 (Fictitious Business Name), 10176(e) (Commingling), of the Code and are grounds for discipline under Section 10176(e), 10177(d) (Willful Disregard/Real Estate Law) and 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.

TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 3rd day of August, 2010.