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FILED

MAR 04 2016

BUREAU OF REAL ESTATE

By S. Black

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of JOSEPH D. ACQUISTAPACE, Respondent.	No. H-5440 SAC

ORDER DENYING REINSTATEMENT OF LICENSE

On July 29, 2011, a Decision was rendered in Case No. H-5440 SAC revoking the real estate salesperson license of Respondent effective August 24, 2011.

On February 26, 2015, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

I have considered the petition of Respondent and the evidence submitted in support thereof.

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The Bureau has developed criteria in Section 2911 of Title 10, California Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for reinstatement of a license. Among the criteria relevant in this proceeding are:

Regulation 2911(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

Respondent has failed to pay restitution of $4,585.00 to Kendell Johnson as ordered in the H-5441 SAC Desist & Refrain Order.

Regulation 2911(j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

Respondent owes a 2008 small claims judgment in the amount of $7,500.00 and a 2009 civil judgment in the amount of $14,990.00.

Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate salesperson license at this time.

Given the violations found and the fact that Respondent has not established that Respondent has satisfied Regulations 2911(b) and (j), I am not satisfied that Respondent is sufficiently rehabilitated to receive a real estate salesperson license.

NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement of Respondent's real estate salesperson license is denied.

This Order shall become effective at 12 o'clock noon on MAR 25 2016.

IT IS SO ORDERED 3/1/2016

REAL ESTATE COMMISSIONER

Wayne S. Bell

FILED

AUG 04 2011

DEPARTMENT OF REAL ESTATE

By L. Jones

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:	)	
	)	NO. H-5440 SAC
	)	
JOSEPH D. ACQUISTAPACE,	)	OAH NO. 2011020985
	)	
	)	
Respondent.	)	
	)	

DECISION

The Proposed Decision dated June 27, 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.

This Decision shall become effective at 12 o'clock noon on AUG 24 2011.

IT IS SO ORDERED 7/29/11.

BARBARA J. BIGBY
Acting Real Estate Commissioner

Barbara J. Bigby

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. H-5440 SAC
JOSEPH D. ACQUISTAPACE,	OAH No. 2011020985
Respondent.	

PROPOSED DECISION

This matter was heard before Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 23, 2011, in Sacramento, California.

Kenneth C. Espell, Counsel, Department of Real Estate (department), represented complainant Tricia D. Sommers, Deputy Real Estate Commissioner of the State of California.

No appearance was made by or on behalf of Joseph D. Acquistapace (respondent).

Evidence was received, and the record was held open until May 27, 2011, in order to allow the department to file its request for default fees and costs. The department's request was received on May 26, 2011, and the matter was submitted for decision on May 27, 2011.

FACTUAL FINDINGS

1. On December 6, 2004, the department issued Real Estate Salesperson License Number S01465790 to respondent. Respondent's license will expire on February 26, 2013, unless renewed or revoked.

2. On March 24, 2009, respondent filed a completed form entitled "Limited Liability Company Articles of Organization" for his Limited Liability Company (LLC), "Legal Modification Services, LLC," with the Secretary of State. Respondent listed himself as the initial agent for service of process and he indicated that the LLC "will be managed by one manager." Respondent's LLC was approved by the Secretary of State on or about the same date.

3. On October 20, 2010, complainant made and filed the First Amended Accusation in her official capacity. Complainant seeks to revoke respondent's real estate salesperson license based on dishonest conduct related to loan modification services for

borrowers. Thereafter, on December 10, 2010, respondent filed a Notice of Defense to contest the Accusation. Respondent indicated his address on the Notice of Defense as follows:

6245 Carolinda Drive
Granite Bay, CA 95746

Notice of the date, time and place of hearing was served on respondent by first class mail on March 9, 2011 at his address of record as set forth above.

Despite proper service of the Notice of Hearing, respondent did not appear and was not otherwise represented at hearing. Upon proof of compliance with Government Code sections 11505 and 11509, the matter proceeded as a default pursuant to Government Code section 11520.

Consumer Complaint filed by Kendall Johnson

4. On September 29, 2009, Kendall Johnson (Johnson) filed a complaint with the department regarding her dissatisfaction with respondent's loan modification services which were to be performed on two properties she and her husband owned. One of the properties was her home, and the other property was her business. Johnson complained that she paid respondent $4,585 to modify the loans on her two properties, that respondent told her to stop making her loan payments, and that if respondent could not obtain loan modifications, her money would be refunded. Respondent represented to Johnson that he sent Johnson's loan modification documentation to the lenders; however, the lenders did not receive the documentation. Respondent promised that the bank would not foreclose on Johnson. Johnson also indicated that the attorney assisting respondent with the modifications was, in fact, not an attorney. Johnson complained that respondent failed to modify Johnson's loans, and did not refund her money.

Wrongful Acts by Respondent

5. Respondent, through his LLC, solicited loan modification services on advertising material sent to Johnson through the mail. After reviewing the advertising material, Johnson contacted respondent in May 2009 and became respondent's client. Johnson wrote checks made payable to "Legal Modification Services, LLC," on May 13, 2009 in the amount of $500, on June 1, 2009 in the amount of $2,100, and on June 6, 2009, in the amount of $1,985. The total amount paid to respondent was $4,585, prior to respondent commencing loan modification services. Neither respondent nor "Legal Modification Services, LLC" possessed a real estate broker's license issued by the department in order to perform loan modification services. In addition, respondent received advanced payments for providing loan modification services without first obtaining approval by the department for his advertising materials used in obtaining advanced fees.

6. Respondent cashed Johnson's advanced payments of $2,100 on June 2, 2009, $500 on June 25, 2009, and $1,985 on July 7, 2009, and deposited the money into a Bank of

America account. The account was not identified as a trust account. Respondent did not disclose to Johnson that her advance payments were trust monies to be deposited into a trust account.

7. Respondent failed to perform any loan modification services on Johnson's behalf. Johnson received a Notice of Foreclosure on her home on or after July 24, 2009. After negotiating with her lender on her own, Johnson was able to save her home by refinancing it. Respondent did not refund Johnson's money.

8. Respondent did not disclose to Johnson that he was not a real estate broker. Respondent acted outside of the scope of his real estate salesperson's license by providing loan modification services. Furthermore, respondent did not disclose to Johnson that his LLC was not licensed by the department in any capacity.

9. Respondent used the fictitious business name of "Legal Modification Services, LLC" without first registering the name with the department.

10. Respondent failed to provide the department with his current mailing address. The department's numerous attempts to personally serve respondent with an Order to Desist and Refrain as set forth in Finding 11 below, as well as the original Accusation in this matter, to his addresses of record at the time, were unsuccessful. Finally, after a diligent search, the department located and was able to personally serve respondent with the Order to Desist and Refrain, the original and first amended Accusations, Statement to Respondent, Notice of Defense, and Discovery Provisions, on December 8, 2010. Respondent did not provide the address where he was personally served, as identified in Factual Finding 3, to the department.

11. On August 11, 2010, the Real Estate Commissioner issued to respondent an Order to Desist and Refrain from acting as a real estate broker performing loan modification services. The Order to Desist and Refrain was issued as a result of respondent's unlicensed and unauthorized activities related to Johnson's complaint filed with the department. Respondent was ordered to immediately desist and refrain from:

(a) Soliciting borrowers and/or performing services for borrowers or lenders in connection with loans secured directly or collaterally by one or more liens on real property, and

(b) Charging, demanding, or collecting an advance fee for any of the services offered, unless respondent obtained a real estate broker license issued by the department and unless respondent was in compliance with all the requirements related to advance fees.

(c) The Real Estate Commissioner also ordered respondent to refund Johnson $4,585, the total amount that respondent

wrongfully and illegally collected from Johnson as his fees for loan modification services.

Costs

12. On May 24, 2011, as a result of respondent's failure to appear at the hearing, and as a condition precedent to any attempt by respondent to set aside the default and proposed decision in this matter, the department requested, pursuant to Government Code section 11520, an order awarding the following fees and costs associated with preparation and attendance at the hearing. The department's counsel, Kenneth C. Espell, who prepared the request, spent 13 hours preparing for and appearing at the hearing. Mr. Espell used the Office of Administrative Hearings hourly rate for Staff Counsel, General Jurisdiction, of $171 per hour, to calculate his attorney's fees of $2,223. Mr. Espell calculated Senior Deputy Commissioner Kyle Jones's hearing preparation time and testimony to be five hours at the rate of $38.74 per hour, for a total of $193.70. Mr. Espell calculated witness Kendall Johnson's fees and mileage to be $74.74. Ms. Johnson drove to the hearing from her residence in Marysville. Mr. Espell calculated the court reporter's fee for one-half day to be $124.44 (the court reporter's half-day rate). Lastly, Mr. Espell requested administrative law judge (ALJ) fees at the hourly rate of $180.00 per hour, for the ALJ's time in conducting the hearing and preparing the proposed decision. The total amount of administrative law judge fees was indicated "to be determined." The total amount requested by the department was $2,615.88 plus administrative law judge fees.

13. The department's request for costs is addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Business and Professions Code section 10177, subdivisions (d), (g), and (j) state, in pertinent part:

> The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following ...
>
> [¶]...[¶]
>
> (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law

and Chapter 1 (commencing with Section 11000) of Part 2.

[¶]...[¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

[¶]...[¶]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

[¶]...[¶]

2. Business and Professions Code section 10130, states, in pertinent part:

It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department...

[¶]...[¶]

3. Business and Professions Code section 10131, subdivision (d), states, in pertinent part:

A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

[¶]...[¶]

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

[¶]...[¶]

4. Business and Professions Code section 10085, states, in pertinent part:

The commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published...

[¶]...[¶]

5. Business and Professions Code section 10145(c), states, in pertinent part:

[¶]...[¶]

A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

[¶]...[¶]

6. Business and Professions Code sections 10176, subdivisions (a), (b), and (c) state, in pertinent part:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade or induce.

(c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.

[¶]...[¶]

7. California Code of Regulations, Title 10, section 2970 states, in pertinent part:

(a) A person who proposes to collect an advance fee as defined in Section 10086 in the Code shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use...

[¶]...[¶]

8. California Code of Regulations, Title 10, section 2731 states, in pertinent part:

(a) A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name...

[¶]...[¶]

9. California Code of Regulations, Title 10, section 2715 states, in pertinent part:

A real estate salesperson shall maintain on file with the commissioner his current mailing address, and when applicable, the address of the principal business office of the broker to whom the salesperson is at the time licensed...

Cause for Revocation

10. Cause for revocation of respondent's real estate license was established pursuant to Business and Professions Code sections 10177, subdivision (d), and 10130, by reason of Factual Finding 5, in that respondent solicited and advertised loan modification services, and collected advanced fees for such services, without a real estate broker's license.

11. Cause for revocation of respondent's real estate license was established pursuant to Business and Professions Code sections 10177, subdivision (d), and 10085, in conjunction with California Code of Regulations, title 10, section 2970, by reason of Factual Finding 5, in that respondent failed to submit his advance fee advertising materials to the department for review and approval.

12. Cause for revocation of respondent's real estate license was established pursuant to Business and Professions Code sections 10177, subdivision (d), and 10145(c), by reason of Factual Finding 6, in that respondent collected advance fee payments, and failed to treat the payments as trust funds.

13. Cause for revocation of respondent's real estate license was established pursuant to Business and Professions Code sections 10177, subdivision (d), 10176 subdivisions (a), (b), and (c), and 10177, subdivisions (g) and (j), by reason of Factual Findings 5, 6, 7, 8, in that he failed to disclose material facts, mishandled trust monies, failed to render the loan modification services, and failed to refund Johnson's monies as promised.

14. Cause for revocation of respondent's real estate license was established pursuant to Business and Professions Code sections 10177, subdivision (d), and California Code of Regulations, title 10, section 2731, by reason of Factual Finding 9, in that respondent failed to register his fictitious business name with the department.

15. Cause for revocation of respondent's real estate license was established pursuant to Business and Professions Code sections 10177, subdivision (d), and California Code of Regulations, title 10, section 2715, by reason of Factual Finding 10, in that respondent failed to keep the department apprised of his current mailing address.

Costs

16. Government Code section 11520 pertains to defaults and uncontested cases under the formal hearing administrative adjudication provisions of the Administrative Procedure Act (Gov. Code, § 11500 et seq.) Government Code section 11520, subdivision (b), states:

> (b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

17. The department has requested, as a condition of setting aside any default and default judgment, an order requiring the respondent to reimburse the department for fees and costs associated with the hearing in which respondent failed to appear. As set forth in Finding 12, the cost of preparing and appearing at the hearing, as claimed by the department, is $2,615.88 plus ALJ fees. The ALJ may award "reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing." (Gov. Code § 11520, subd. (b)). However, respondent must first request that the default be set aside. The department may then submit its opposition or response setting forth its expenses, followed by respondent's reply to the department's requests for expenses. Since respondent has not sought to have the default set aside, the department's request for default fees and costs is premature. Therefore, costs shall not be awarded at this time.

ORDER

The real estate license of respondent Joseph D. Acquistapace is revoked, by reason of Legal Conclusions 10 through 15, separately and collectively.

DATED: June 27, 2011

DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

KENNETH C. ESPELL, Counsel (SBN 178757)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
-or- (916) 227-0868 (Direct)

FILED

OCT 21 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of JOSEPH D. ACQUISTAPACE, Respondent.	NO. H-5440 SAC FIRST AMENDED ACCUSATION

The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy Real Estate Commissioner of the State of California for Accusation against Respondent JOSEPH D. ACQUISTAPACE ("Respondent"), is informed and alleges as follows:

FIRST CAUSE OF ACTION
Unlicensed Loan Modification

1

At all times herein mentioned, Respondent was and now is licensed by the Department as a real estate salesperson.

2

On or about March 25, 2009 and continuing, Respondent, under the fictitious business name Legal Modification Services, LLC, 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 Business & Professions Code ("Code"), in that Respondent solicited and/or performed services for borrowers in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, for or in expectation of a compensation and claimed, demanded, charged, received, collected or contracted for an advanced fee for such services, including but not limited to the solicitation of the following borrowers for the modification or renegotiation of their existing mortgage loans in the following locations:

	Borrower	Location
A)	Kendell J.	Marysville, California

3

Respondent's activities as described in Paragraph 2, above, without first obtaining a real estate broker license and/or without active broker supervision constitutes a violation of Section 10130 of the Code (Real estate license required) and is grounds for the revocation or suspension of Respondent's real estate license or license rights under Sections 10177(d) of the Code (Willful disregard or violation of real estate law).

4

Respondent failed to submit to the Department the materials used in obtaining advance fee agreements related to the solicitations described in Paragraph 2, above, including but not limited to, the advance fee contract, advance fee letters, and/or advance fee solicitation materials used to solicit prospective clients, so that the Commissioner of the Department ("Commissioner") could determine whether the agreements and other written materials comply with Section 10085 of the Code (advance fee agreements and materials) and Section 2970 of Title 10, Chapter 6, California Code of Regulations ("Commissioner's Regulations") (advance fee agreements and materials), concerning advance fee contracts, advertising and/or marketing materials.

5

Respondent's failure to submit the advance fee materials, described in Paragraphs 2 and 3, above, constitutes violations of Section 10085 of the Code and Section 2970 of the Commissioner's Regulations, and constitutes separate grounds for the revocation or suspension of Respondent's real estate license or license rights under Sections 10177(d) of the Code.

6

Respondent collected advance fee payments from his client as described in Paragraph 2, above. Each of the advance fee payments received by Respondent were trust funds which Respondent failed to properly treat as trust funds in the manner required by Section 10145(c) of the Code (trust fund handling).

7

Respondent's failure to properly handle the trust funds he received from each of his clients, as described in Paragraph 6, above, constitutes a separate violation of Section 10145(c) of the Code and further constitutes separate grounds for the revocation or suspension of Respondent's real estate license or license rights under Sections 10177(d) of the Code.

8

Respondent, after receiving advance fee payments from his client listed above, failed to perform the loan modification services promised and, to date, has not made refund of the advance fees collected from his client.

9

Among other acts designed to mislead customers into believing that Respondent was authorized to conduct loan modifications for borrowers, Respondent's actions as set forth in Paragraphs 1 through 8, above, were willful, deceptive and dishonest and a breach of their fiduciary duties to their clients in that Respondent: (1) failed to disclose to borrowers that Respondent was not a licensed real estate broker and/or was not acting within the course and scope of his employment under a licensed real estate broker; (2) failed to disclose that Legal

Modification Services, LLC was not licensed in any fashion by the Department; (3) failed to disclose that the advance fee materials used by Respondent had not been reviewed by the Department prior to its use; (4) failed to disclose that Respondent was not handling advanced fees received from clients in the manner prescribed by law; and (5) failed to provide the services promised and/or to refund the Borrower's advance fee payment(s). By conducting unauthorized and unlicensed loan modification services, as alleged herein, Respondent breached his fiduciary duty to his clients and therefore violated Sections 10176(a) (Making a substantial misrepresentation); 10176(b) (Making any false promise of a character likely to influence, persuade or induce); 10776(c) (Continued and flagrant course of misrepresentation or the making of false promises); 10177(i) (Fraud or dishonest dealing); and, 10177(j) (Fraud or dishonest dealing) of the Code, or, in the alternative, Section 10177(g) of the Code (Negligence or incompetence in licensed activities) a violation of each code section constitutes a separate cause for the suspension or revocation of the license and license rights of Respondent under Section 10177(d) of the Code.

SECOND CAUSE OF ACTION
Unlicensed DBA

10

Each and every allegation in Paragraphs 1 through 9, inclusive, above, is incorporated by this reference as if fully set forth herein.

11

At all times relevant herein Respondent used the fictitious business name *Legal Modification Services, LLC.* This fictitious business name is not registered with the Department, in violation of Section 2731 of the Commissioner's Regulation and constitutes a separate cause for the suspension or revocation of the license and license rights of Respondent under Section 10177(d) of the Code.

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THIRD CAUSE OF ACTION
Failure to Notify Department of Address Change

12

Each and every allegation in Paragraphs 1 through 11, inclusive, above, is incorporated by this reference as if fully set forth herein.

13

As of October 5, 2010, Respondent's mailing address registered with the Department was 3598 Bardolino Way, Rancho Cordova, CA 95670. However a registered process server employed by the Department to personally serve the original Accusation in this case and a related desist and refrain order upon Respondent could not be affected as, according to person living at the 3598 Bardolino Way address, Respondent no longer lived at the address.

14

Pursuant to Section 2715 of the Commissioner's Regulations, Respondent was required to maintain a current mailing address with the Department. Respondent failed to provide the Department with his current mailing address. Respondent's failure to maintain a current address constitutes separate grounds for the revocation or suspension of Respondent's real estate license or license rights under Sections 10177(d) of the Code.

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 JOSEPH D. ACQUISTAPACE 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 applicable provisions of law.

Tricia D. Sommers

TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 20th day of October, 2010.

KENNETH C. ESPELL, Counsel (SBN 178757)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
-or- (916) 227-0868 (Direct)

FILED
AUG 13 2010
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of JOSEPH D. ACQUISTAPACE, Respondent.	NO. H-5440 SAC ACCUSATION

The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy Real Estate Commissioner of the State of California for Accusation against Respondent JOSEPH D. ACQUISTAPACE ("Respondent"), is informed and alleges as follows:

FIRST CAUSE OF ACTION
Unlicensed Loan Modification

1

At all times herein mentioned, Respondent was and now is licensed by the Department solely as a real estate salesperson and was not employed by a licensed real estate broker.

2

On or about March 25, 2009 and continuing, Respondent, under the fictitious business name Legal Modification Services, LLC, 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 Business & Professions Code ("Code"), in that Respondent solicited and/or performed services for borrowers in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, for or in expectation of a compensation and claimed, demanded, charged, received, collected or contracted for an advanced fee for such services, including but not limited to the solicitation of the following borrowers for the modification or renegotiation of their existing mortgage loans in the following locations:

	Borrower	Location
A)	Kendell J.	Marysville, California
B)	Kendell. J.	Marysville, California

3

Respondent's conduct of the solicitations described in Paragraph 2, above, without first obtaining a real estate broker license and/or without the employment and supervision of a California real estate broker in violation of Sections 10130 and 10131 of the Code (license required; broker defined) and each violation enumerated in Paragraph 2, above, constitute separate grounds for the revocation or suspension of Respondent's real estate license or license rights under Sections 10177(d) of the Code.

4

Respondent failed to submit to the Department the materials used in obtaining advance fee agreements related to the solicitations described in Paragraph 2, above, including but not limited to, the advance fee contract, advance fee letters, and/or advance fee solicitation materials used to solicit prospective clients, so that the Commissioner of the Department ("Commissioner") could determine whether the agreements and other written materials comply with Section 10085 of the Code (advance fee agreements and materials) and Section 2970 of Title 10, Chapter 6, California Code of Regulations ("Regulations") (advance fee agreements and materials), concerning advance fee contracts, advertising and/or marketing materials.

5

Respondent's failure to submit advance fee materials, described in Paragraphs 2 and 3, above, constitutes violations of Section 10085 of the Code and Section 2970 of the Regulations, and is grounds for the revocation or suspension of Respondent's real estate license or license rights under Sections 10177(d) of the Code.

6

Respondent collected advance fee payments from his client as described in Paragraph 2, above. Each of the advance fee payments received by Respondent were trust funds which Respondent failed to properly handle such funds as required by Section 10145(c) of the Code (trust fund handling).

7

Respondent's failure to properly handle the trust funds he received from each of his clients, as described in Paragraph 6, above, each failure constitutes a separate violation of Section 10145(c) of the Code and further constitutes separate grounds for the revocation or suspension of Respondent's real estate license or license rights under Sections 10177(d) of the Code.

8

Respondent, after receiving advance fee payments from his client listed above, failed to perform the loan modification services promised and, to date, has not made refund of the advance fees received to his client.

9

Respondent's representation that he was permitted to perform loan modifications, his failure to provide the services promised and/or to refund the Borrower's funds each constitutes fraud or dishonest dealing and each are separate grounds for the revocation or suspension of Respondent's real estate license or license rights under Sections 10176(i) and/or 10177(j), or in the alternative, under Section 10177(g) of the Code.

///

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 JOSEPH D. ACQUISTAPACE 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 applicable provisions of law.

TRICIA D. SOMMERS
Deputy Real Estate Commissioner

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