FILED

NOV - 1 2013

BUREAU OF REAL ESTATE

By K. Contreras

BEFORE THE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	NO. H-5689 SAC
REGINALD SYLVESTER,	)	
	)	OAH NO. 2011110545
Respondents.	)	
	)	

DECISION

The Proposed Decision dated October 1, 2013, 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 NOV 25 2013.

IT IS SO ORDERED NOV 01 2013.

REAL ESTATE COMMISSIONER

By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: REGINALD SYLVESTER, Respondent.	Case No. H-5689SAC OAH No. 2011110545

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 16, 2013, in Sacramento, California.

Mary F. Clarke, Counsel, represented Tricia Sommers (complainant), a Deputy Real Estate Commissioner with the Bureau of Real Estate (Bureau),[1] Department of Consumer Affairs, State of California.

Reginald Sylvester (respondent) represented himself.

Evidence was received on September 16, 2013. The record was left open to allow respondent to file a closing brief and for complainant to file a response. Respondent filed a closing brief, which was marked for identification as Exhibit I. Complainant filed a response, which was marked for identification as Exhibit 9. The record was closed, and the matter was submitted for decision on September 30, 2013.

SUMMARY

Complainant seeks to revoke respondent's broker license for: (1) collecting advance fees for loan modification services prior to submitting an advance fee agreement to the Bureau for review; (2) continuing to collect advance fees for loan modification services after October 11, 2009; (3) failing to handle trust funds collected from borrowers in accordance

[1] On July 1, 2013, the Department of Real Estate became the Bureau of Real Estate within the Department of Consumer Affairs. The term "Bureau" as used herein includes the Department of Real Estate and all actions taken by the Department of Real Estate before it became the Bureau of Real Estate.

with statutory and regulatory requirements; (4) allowing an unlicensed individual to perform real estate activities; (5) failing to obtain a written agreement with a salesperson that conformed to regulatory requirements; and (6) performing loan modification services under business names that were not licensed by the Bureau. When all the evidence is considered, complainant established by clear and convincing evidence that respondent's broker license should be revoked. But respondent provided sufficient evidence to establish that it would be consistent with public safety to grant him a restricted real estate salesperson license on the terms and conditions set forth below.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.

2. Respondent was licensed as a real estate salesperson in April 2004. On January 23, 2009, respondent was licensed as a real estate broker. On April 14, 2009, respondent added to his license "Lokman Realty Group" as a name under which he was doing business. Respondent's broker license will expire on January 22, 2017, unless renewed or revoked.

3. Respondent submitted Fictitious Business Name Statements that he filed in Sacramento and San Joaquin counties, which indicate that he has been conducting business under the name "Lokman Financial Group" since at least January 2006. Doing business as Lokman Financial Group, respondent offered loan modification services to residential borrowers.

4. On July 11, 2007, Articles of Incorporation for Lokman Financial Group, Inc. were filed with the Secretary of State. On January 19, 2010, and November 30, 2010, Statements of Information were filed with the Secretary of State, which showed that respondent was the chief executive officer, secretary, chief financial officer, and only director of Lokman Financial Group, Inc. As set forth in a Certificate of Status issued by the Secretary of State on April 6, 2011, the California Franchise Tax Board suspended the powers, rights and privileges of Lokman Financial Group, Inc. on September 1, 2009.

5. The Bureau has not issued a real estate license to Lokman Financial Group or Lokman Financial Group, Inc. These entities are not included on respondent's license certification as names under which respondent may conduct real estate business.

Respondent's Advance Fee Agreement

6. On April 14, 2009, the Bureau received an "Advance Fee Agreement for Loan Modification Services" from respondent, doing business as Lokman Realty Group.[2] By letter dated April 28, 2009, the Bureau notified respondent that this agreement could not be used because it did not include the following "essential elements": (1) "The agreement must include the trust fund bank account number and depository"; and (2) "The accounting statement must include the amount of the advance fee to be collected."

7. On June 15, 2009, the Bureau received another "Advance Fee Agreement for Loan Modification Services" (Advance Fee Agreement) from respondent, doing business as Lokman Realty Group. On June 24, 2009, the Bureau notified respondent that it had "no objection" to respondent's use of the Advance Fee Agreement (No Objection Letter).

8. On October 11, 2009, Senate Bill (SB) 94 was signed into law and took effect immediately. The bill prohibited any person, including real estate licensees, from demanding, charging, or collecting an advance fee from a consumer for loan modification or mortgage loan forbearance services.

Salguero Complaint

9. In 2009, Blanca Salguero and her husband were unable to make the payments on their home mortgage. After Ms. Salguero saw a television commercial, the Salgueros went to Lokman Financial Services to obtain loan modification services. On April 23, 2009, the Salgueros signed a "Contract for Services - Loan Modification" with Lokman Financial Group, Inc. (Salguero Contract). The Salguero Contract is very different from the Advance Fee Agreement for which respondent received a No Objection Letter from the Bureau in June 2009. The Salguero Contract described the services to be provided as follows:

- Contact the clients' lender(s) and request a loan modification on the clients' behalf in writing.

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[2] Business and Professions Code section 10026, subdivision (a), defines the term "advance fee" as follows:

> The term "advance fee," as used in this part, is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, as that term is defined in Section 10027, before fully completing the service the licensee contracted to perform or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this division.

- Provide the lender(s) with the necessary documentation (provided by the client) requested by the lender(s).
- Serve as the clients' liaison with the lender(s).
- Provide the client with current market data and analysis as necessary.

The Salguero Contract described the payment terms as follows:

> In exchange for the Services, the Client will pay compensation to Lokman Financial Group, Inc. for the Services in the amount of $795.00 for a 1st Mortgage Only and $995.00 for a 1st and 2nd Mortgage. This will be payable in a lump sum **before** Services are rendered. (Bolding added.)

10. On April 23, 2009, the Salgueros paid Lokman Financial Group $795 for loan modification services. Thereafter, the Salgueros also purchased debt modification services from Lokman Financial Group.

11. Ms. Salguero was dissatisfied with the loan modification services she received from Lokman Financial Group. When she called her bank to ask about the progress of the loan modification, she was informed that there was no modification and that the bank had talked only once to Lokman Financial Group about a loan modification.

12. On April 12, 2010, Mr. Salguero wrote an email to Lokman Financial Group, which stated that, although the Salgueros had paid for loan modification services, "nothing was ever done to put this action in progress." Mr. Salguero asked that Lokman Financial Group reimburse the money the Salgueros had paid.

13. At hearing, respondent submitted notes from Lokman Financial Group's Salguero file which indicate that numerous contacts were made in an effort to resolve the Salgueros' mortgage loan. Respondent also submitted an email he drafted to Mr. Salguero dated April 15, 2010, which described the efforts Lokman Financial Group had made on the Salgueros' behalf, and stated that "we will not refund any money back for our modification services." According to respondent's testimony, this email was not sent to Mr. Salguero. The file notes indicate that the Salgueros cancelled their services from Lokman Financial Group as of November 11, 2010.

14. The Salgueros lost their home to foreclosure. The Salgueros did not receive any reimbursement from Lokman Financial Group or respondent of the advance fees they paid. The Salgueros filed a complaint against respondent with the Bureau.

Audit of Respondent

15. As a result of an anonymous complaint received by the Bureau, an audit of respondent's loan modification and residential resale activities was requested. Yanhua (Penny) Xue, who was then a Bureau General Auditor III, conducted the audit on August 5 and 6, 2010, for the period of January 23, 2009, to June 30, 2010. Ms. Xue examined some of respondent's records on a sample basis. The types of records she examined included bank statements, signature cards, receipts, loan modification files, sales files, and broker-salesperson agreement. Ms. Xue testified that, throughout the audit process, respondent was courteous and cooperative.

16. From her audit, Ms. Xue determined that between January 23, 2009, and June 30, 2010, respondent, doing business as Lokman Financial Group and Lokman Financial Group, Inc., processed 464 loan modifications for borrowers and collected $394,498.10 in advance fees.

17. Respondent maintained two bank accounts and one trust account with Bank of America. Respondent was the only signatory on all three of these accounts. Respondent deposited into the first bank account, Account No. 25424-67292 (Bank #1), the advance fees he collected from borrowers, as well the commissions he received from his real estate and insurance activities.[3] Respondent made disbursements from Bank #1 into the second bank account, Account No. 11399-71402 (Bank #2), to pay business expenses and borrowers' refunds. The Account Name on both Bank #1 and Bank #2 was "Lokman Financial Group, Inc. Expense Account."

18. Respondent's trust account, Account No. 11392-72641 (Trust #1), was created to receive deposits of borrowers' advance fees for loan modifications. The Account Name on Trust #1 was "Reginald Sylvester dba Lokman Realty Group Sole Prop." The Advance Fee Agreement reviewed by the Bureau (Finding 7) provides:

> **2. <u>Deposit of Advance Fee and Accounting Funds</u>**. The Broker will deposit the advance fee into [Trust #1]. The Broker will provide verified accounting of these funds to the Principal at the end of each calendar quarter following the execution of this agreement by the Principal, and at the completion or termination of this agreement (whichever occurs first).

Ms. Xue reviewed only one bank statement for Trust #1, and that statement showed only one transaction for $5. According to Ms. Xue, she did not fully review Trust #1 because it was closed as of the time of her audit. At hearing, Ms. Xue described the advance fees that respondent collected as trust funds. Respondent admitted that he deposited only one advance fee he received into Trust #1. He did not deposit into Trust #1 any of the other

[3] Respondent is an insurance agent licensed by the Department of Insurance.

advance fees he received from borrowers because he believed that they were monies that he had earned.

19. Respondent did not maintain records of all trust funds received and disbursed (control records) for Bank #1, Bank #2, and Trust #1. Respondent did not perform a monthly reconciliation of the sum of separate beneficiary records to the record of all trust funds received and disbursed for Bank #1, Bank #2 and Trust #1. He failed to maintain records of trust funds received and disbursed for each beneficiary (separate records) for Bank #1, Bank #2, and Trust #1. Respondent did not send quarterly accountings to borrowers to account for the advance fees he collected from them.

20. Because respondent did not maintain control records, separate records, or trust fund reconciliations for the advance fees he collected, Ms. Xue could not determine trust fund accountabilities[4] and adjusted balances for Bank #1 and Bank #2. She was also unable to determine the amount of trust funds transferred from Bank #1 to Bank #2.

21. As of June 30, 2010, Ms. Xue found that there were 245 loan modification transactions in process for which respondent had collected advance fees. Respondent's agreements with borrowers for these transactions did not specify any phases for the loan modification process. Consequently, Ms. Xue was not able to determine the fees respondent earned and the balances for the transactions in process.

22. As of June 30, 2010, Bank #1 had an account balance of $730.31, Bank #2 had an account balance of $575.43, and Trust #1 was closed with a $0 balance. Because respondent had not maintained control records, separate records, or trust fund reconciliations, Ms. Xue could not prepare a bank account reconciliation.

23. Although trust funds were deposited in Bank #1 and Bank #2, these accounts were not designated as trust accounts, and were not maintained under the name of a broker or a broker doing business as a trustee.

24. Respondent commingled in Bank #1 and Bank #2 trust funds he received from borrowers in the form of advance fees with commissions he earned from his other real estate and insurance activities. Respondent's bank statements show that he used the monies in these accounts to make purchases from various businesses such as KFC, Wal-Mart, Chevron, Dave Wong's Restaurant, and Safeway. At hearing, respondent asserted that these purchases were business expenses. He stated that he purchased office supplies where he could get the best prices. He sometimes purchased lunch for his office staff. At times, he even purchased clothing for his staff so that they would be able to dress in proper business attire.

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[4] At hearing, Ms. Xue defined "accountability" to mean the broker's liability, including the amount of trust funds that does not belong to the broker.

25. During the audit, Ms. Xue found that Olivia King, who did not have a real estate license, was employed by respondent and signed documents on behalf of Lokman Financial Services as its "LFG Mgr," including a "Contract for Services - Loan Modification Counseling," a "Contract for Services - Loan Modification Package Preparation," and a "Contract for Services - Loan Modification."

26. Ms. Xue reviewed the "Broker-Agent Commission Contract" between respondent and LaTanya Moore, a licensed real estate salesperson employed by respondent under his broker license. Although that contract provided that Ms. Moore agreed to "abide by all Regulations and Laws of the California Department of Real Estate," it did not cover the material aspects of the relationship between the parties, including supervision of licensed activities and duties.

Other Individual Borrowers

27. In the course of her audit, Ms. Xue reviewed respondent's loan modification files regarding various borrowers, including Carlos M., Carlos A. O., and Joel C. and Maria L.

28. Carlos M. On February 9, 2009, Carlos M. signed a "Contract for Services - Loan Modification" with Lokman Financial Group, Inc., which was significantly different from the Advance Fee Agreement for which respondent received a No Objection Letter from the Bureau in June 2009. On the day he signed the contract, Carlos M. paid $1,790 in advance fees. This sum was deposited into Bank #1 on February 17, 2009. Carlos M. had two houses with mortgage loans. In June 2009, these loans were modified.

29. Carlos A. O. On March 8, 2010, Carlos A. O. entered into a "Contract for Services – Loan Modification Counseling," a "Contract for Services - Loan Modification Package Preparation," and a "Contract for Services – Loan Modification" with Lokman Financial Group, Inc. These contracts were very different from the Advance Fee Agreement for which a respondent received a No Objection Letter from the Bureau in June 2009. Both the contract for package preparation and the contact for counseling described the terms of payment as follows:

> In exchange for the Services, the Client will pay compensation to Lokman Financial Group, Inc. for the Services in the amount of $495.00. This will be payable in a lumpsum **before** Services are rendered. (Bolding added.)

The contract for loan modification described the payment terms, in relevant part, as follows:

> In exchange for the Services, the Client will pay compensation to Lokman Financial Group, Inc. for the Services in the amount

of $1,000.00. **This will be payable upon completion of loan modification from lender.** (Bolding in original.)

When Carlos A. O. signed these contracts, he received a document welcoming him to Lokman Financial Group, and explaining the services that would be provided as follows:

> Our Loan Modification processing starts immediately....
>
> | | |
> |---|---|
> | Day 1 | Contact Lender and fax the Borrowers Authorization Form. |
> | Day 2 | Office Manager reviews file for clarity and any missing docs. Credit pulled to ensure debt to income ratios are accurate. |
> | Day 3 | Fax completed Loan Modification Package to Lender(s). Scan submitted Loan Modification Package for electronic file. |
> | 1st Friday | Loan Modification Package sent to Lender(s) by Certified Mail. |

On March 8, 2010, Carlos A.O. made a check in the amount of $990 payable to Lokman Financial Group for "loan modification." This amount was deposited into Bank #1 on March 26, 2010.

30. Joel C. and Maria L. On February 2, 2010, Joel C. and Maria L. entered into a "Contract for Services – Loan Modification Counseling," a "Contract for Services - Loan Modification Package Preparation," and a "Contract for Services – Loan Modification" with Lokman Financial Group, Inc. On February 2, 2010, they paid $495 for "Loan Mod. Pck. Preparation & Counseling." On February 22, 2010, they paid another $495.

31. Respondent told Ms. Xue that, in October or November 2009, after SB 94 had gone into effect, he changed his way of providing loan modification services and did not collect advance fees any more. Instead, he entered into the three contracts described in Findings 29 and 30 with each borrower: (1) a contract for counseling services for $495, (2) a contract for package preparation for $495, and (3) a contract for loan modification for $1,000. He stated that he provided the counseling services when the clients came into the office. He also stated that his office completed the package preparation the day the contract was signed.

Respondent's Testimony and Evidence

32. Respondent is a former Marine, who was honorably discharged in 1992. While in the Marines, he took administrative courses. As set forth above, he is licensed by both the Bureau and the Department of Insurance. Respondent is also a former loan officer.

33. Respondent testified that, at the start of the mortgage loan crisis, borrowers began coming to his office looking for assistance to protect their homes. According to respondent, banks were not willing to work with their borrowers, and often sold homes after foreclosure for much less than the amounts owing on the mortgages.

34. Respondent asserted that he did not scam any of his clients, and he never guaranteed that he could save anyone's home from foreclosure. His business took an initial upfront fee, starting at $595, to perform all the document-processing work that had to be conducted to obtain a loan modification. According to respondent, if a borrower's home was not sold, the fee was retained for administrative expenses. If the borrower's home was sold, the fee would be returned. Respondent asserted that his office worked diligently for many long hours trying to save as many of his clients' homes from foreclosure as he could. He stated that the costs of doing loan modifications caused him to raise the fees he charged, because he needed to purchase more computers, and to pay for more internet and telephone services. He also testified that, while his office may have received $394,498.10 for the 464 loan modifications they processed for borrowers, that works out to about $850 per loan modification. Respondent asserted that this amount was a reasonable fee for all the work and effort respondent's office put into trying to save his clients' homes. At least 415 of respondent's clients obtained loan modifications.

35. Respondent asserted that, when he first started doing loan modifications, he was not aware that he was required to have his advance fee agreement reviewed by the Bureau because the Bureau had not issued any guidance to real estate brokers. It was only after the Bureau issued guidance on advance fees that he learned he was required to submit his advance fee agreement to the Bureau for review.

36. Respondent testified that he did not look at his clients' advance fees as trust funds. Instead, given the considerable amount of work that his office had to perform to process a loan modification, he considered the upfront fees he obtained from borrowers as "earned funds." He stated that he collected only the initial fee, which was 25 percent of the total fee set forth in the Advance Fee Agreement. He did not ask his clients for the remaining 75 percent of the fee the Advance Fee Agreement provided for.

37. Respondent conceded that he did not keep the records that Ms. Xue described in her audit. His office did not keep columnar records or separate records for his loan modification clients, and did not perform trust account reconciliations. He did not provide quarterly accounting to his clients. He also conceded that his office collected fees before they completed the loan modification services for his clients. He asserted that his office no longer collects advance fees for any services. In his closing brief he offered to reimburse the Salgueros for the advance fees they paid.

38. Respondent testified that Olivia King signed agreements regarding loan modifications, but only to indicate that she had completed the work she was assigned to

perform. According to respondent, he had final signature authority on all contracts Ms. King initially signed.

39. Respondent conceded that LaTanya Moore's "Broker-Agent Commission Contract" did not include all the information required by regulation to be included in such a contract. He stated that, at the time he entered in that contract, he was a new broker, and he appreciated the guidance Ms. Xue gave him. Ms. Moore no longer works for respondent as a real estate salesperson.

40. Respondent submitted the first pages of the 415 loan modification agreements his clients entered into.

41. Respondent submitted 14 character references. These references were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).[5] The clients who wrote the character references all praise respondent's work and effort in saving their homes, his patience in explaining the process to them, and his honesty in following through on his promises to help them.

Discussion

42. At hearing, respondent testified in a polite, professional and direct fashion. The character references he submitted were strong and positive. He was cooperative and courteous throughout the audit process. There was no evidence that he ever intentionally scammed or deceived his clients. From the evidence presented, it appeared that respondent worked diligently on behalf of his clients to save their homes from foreclosure.

43. But while respondent may not have engaged in intentional wrongdoing, he nonetheless failed to comply with applicable statutes and regulations. The fees respondent collected from clients before he provided loan modification services to them were "advance fees." Prior to October 11, 2009, he could not legally collect such fees until he had submitted a form advance fee agreement to the Bureau and obtained a no objection letter. After respondent received the No Objection Letter dated June 24, 2009, until SB 94 went into effect on October 11, 2009, he could utilize his Advance Fee Agreement so long as he complied with all its terms.

44. After October 11, 2009, as a result of SB 94, respondent could no longer collect advance fees. Respondent's efforts after October 11, 2009, to separate the loan

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[5] Government Code section 11513, subdivision (d), in relevant part, provides:

> Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

modification services he offered into three different contracts – for counseling, package preparation, and loan modification – and to collect upfront fees for counseling and package preparation did not comply with the prohibitions of SB 94. Business and Professions Code section 10026 defines the term "advance fee," to be a "fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license ... before fully completing the service the licensee contracted to perform or represented would be performed," and makes clear that "[n]either an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this division." The fees respondent collected from Carlos A.O. (Finding 29) and Joel C. and Maria L. (Finding 30) were advance fees.

45. The advance fees that respondent collected were trust funds that had to be placed in a trust account until respondent fully performed all the contracted services. Respondent failed to do so. Respondent also failed to maintain control records, separate records, and trust fund reconciliations. He commingled trust funds with other funds. He used trust funds for business and other expenses. He failed to send quarterly accountings to borrowers. He conducted work through unlicensed entities. He allowed an unlicensed person to perform work that required a license. He used a contract to employ a real estate salesperson that did not contain all the terms and conditions required by law.

46. When all the evidence is considered, it would not be consistent with the public interest to allow respondent to retain his broker license. Respondent's failure to understand and comply with applicable law and regulation demonstrates that he should not be allowed to retain his broker license at this time. But because there was no showing that respondent engaged in intentional wrongdoing, fraud or dishonest dealing, it would be consistent with public safety to grant respondent a restricted salesperson license under the terms and conditions set forth below.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 10177, subdivision (d), a real estate licensee may be suspended or revoked when the licensee has "[w]illfully 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."

2. California Code of Regulations, title 10, section 2831, in relevant part, provides:

> (a) 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.

Respondent failed to keep columnar records for Bank #1, Bank #2 and Trust #1 as required by California Code of Regulations, title 10, section 2831. (Finding 19.) This failure constitutes cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

3. California Code of Regulations, title 10, section 2831.1, in relevant part, provides:

(a) 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.

Respondent failed to keep a separate record for each beneficiary or transaction for Bank #1, Bank #2 and Trust #1. (Finding 19.) This failure constitutes cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

4. California Code of Regulations, title 10, section 2831.2 provides:

> The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

Respondent failed to reconcile at least once a month the balance of all separate beneficiary or transaction records with Bank #1, Bank #2, and Trust #1, as required by California Code of Regulations, title 10, section 2831.2. (Finding 19.) This failure constitutes cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

5. Business and Professions Code section 10146, in relevant part, 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 agent only when actually expended for the benefit of the principal or five days after the verified accounts mentioned hereinafter have been mailed to the principal.

Respondent failed to place trust funds entrusted to respondent into a trust fund account in the name of respondent as a trustee at a bank or other financial intuition for Bank #1 and Bank #2 as required by Business and Professions Code section 10146. (Finding 23.)

This failure constitutes cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

6. Business and Professions Code section 10130 provides:

> It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department, or to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state without having obtained a license endorsement.

In violation of Business and Professions Code section 10130, respondent allowed Olivia King to perform real estate activities under the names of Lokman Financial Group and Lokman Financial Group, Inc. when neither Ms. King nor these two entities were licensed by the Bureau. (Findings 5 and 25.) These violations constitute cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

7. Under Business and Professions Code section 10176, subdivision (e), a licensee's real estate license may be revoked for:

> (e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

Respondent caused or permitted money of others that was received and held by respondent in Bank #1 to be commingled with his own money and used for business and other expenses. (Finding 24.) This commingling and use of funds constitutes cause to discipline respondent's broker license under Business and Professions Code section 10176, subdivision (e).[6]

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[6] Complainant also alleged that respondent's commingling and use of trust funds constituted cause to discipline respondent's broker license under Business and Professions Code section 10176, subdivision (i), which provides that a license may be disciplined for "[a]ny other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing." Complainant did not establish that respondent's use of advance fees amounted to fraud or dishonest dealing.

8. California Code of Regulations, title 10, section 2972 provides:

> 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.

Respondent failed to provide quarterly accountings to borrowers as required by Business and Professions Code section 10146 and California Code of Regulations, title 10, section 2972. (Finding 19.) This failure constitutes cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

9. California Code of Regulations, title 10, section 2726 provides:

> Every real estate broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties, including supervision of licensed activities, duties and compensation.

Respondent failed to enter into a written agreement with real estate salesperson LaTanya D. Moore that included all the information required by California Code of Regulations, title 10, section 2726. (Finding 26.) This failure constitutes cause to discipline

respondent's broker license under Business and Professions Code section 10177, subdivision (d).

10. Business and Professions Code section 10085, in relevant part, provides:

> 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 before they are used. Should the commissioner determine that any such matter, when used alone or with any other matter, would tend to mislead he or she may, within 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published.

Business and Professions Code section 10085.5, in relevant part, provides:

> (a) It shall be unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee (1) for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan or, (2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of this part.

California Code of Regulations, title 10, section 2970, in relevant part, provides:

> (a) A person who proposes to collect an advance fee as defined in Section 10026 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.

Respondent violated Business and Professions Code sections 10130, 10085, and 10085.5, and California Code of Regulations, title 10, section 2970 when he entered into a "Contract for Services - Loan Modification" with Carlos M., through the unlicensed entities Lokman Financial Group and Lokman Financial Group, Inc., and collected an advance fee prior to the submission of a form advance fee agreement to the Bureau for review. (Finding 28.) These violations constitute cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

11. Respondent deposited the advance fee he received from Carlos M. into Bank #1, in violation of Business and Professions Code section 10146. This violation constitutes cause to discipline respondent's broker license under Business and Professions Code sections 10176, subdivision (e), and 10177, subdivision (d).

12. Respondent violated Business and Professions Code sections 10130, 10085, and 10085.5, and California Code of Regulations, title 10, section 2970 when he entered into the contracts with the Salgueros, through the unlicensed entities Lokman Financial Group and Lokman Financial Group, Inc., and collected an advance fee prior to the submission of a form advance fee agreement to the Bureau for review. (Findings 9 through 14.) These violations constitute cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

13. Business and Professions Code section 10085.6, in relevant part, provides:

> (a) Notwithstanding any other provision of law, it shall be unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:
>
> (1) Claim, demand, charge, collect, or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform.
>
> (2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.
>
> (3) Take any power of attorney from the borrower for any purpose.

Respondent violated Business and Professions Code sections 10130 and 10085.6 when he entered into contracts for loan modification services with Carlos A. O. and Joel C. and Maria L. through the unlicensed entities Lokman Financial Group and Lokman Financial Group, Inc., and collected advance fees. These violations constitute cause to discipline respondent's broker license under Business and Professions Code section 10177, subdivision (d).

14. As set forth in Findings 42 through 46, given respondent's violations of statutes and regulations, it would not be consistent with the public interest to allow him to retain his broker license. But because there was no showing that respondent engaged in intentional wrongdoing, fraud or dishonest dealing, it would be consistent with public safety

to grant respondent a restricted salesperson license under the terms and conditions set forth below.

ORDER

All licenses and licensing rights of respondent Reginald Sylvester under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), including his broker license, are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within 90 days from the effective date of this Decision, reimburse the Salgueros for all the advance fees they paid to respondent, Lokman Financial Group, and Lokman Financial Group, Inc.

6. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: October 1, 2013

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

MARY F. CLARKE, Counsel (SBN 186744)
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FILED
SEP 29 2011
DEPARTMENT OF REAL ESTATE
By K. Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of REGINALD SYLVESTER, Respondent.	NO. H-5689 SAC ACCUSATION

The Complainant, TRICIA SOMMERS, a Deputy Real Estate Commissioner of the State of California, for Accusation against REGINALD SYLVESTER (herein "Respondent") dba Lokman Financial Group (herein "Lokman") and Lokman Financial Group, Inc. (herein "Lokman Inc."), is informed and alleges as follows:

1

The Complainant makes this Accusation in her official capacity.

2

At all times herein mentioned, Respondent was and now is licensed by the State of California Department of Real Estate (herein the "Department") as a broker.

3

At no time herein mentioned was Lokman, or Lokman Inc., licensed by the Department in any capacity.

4

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, on behalf of others, for compensation or in expectation of compensation within the State of California within the meaning of California Business and Professions Code (the "Code") Sections:

(a) 10131(a), including the operation and conduct of a real estate brokerage wherein Respondent sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity; and,

(b) 10131(d), including the operation and conduct of a mortgage loan brokerage wherein Respondent solicited borrowers or lenders for or negotiated loans, including loan modifications, or collected payments or performed 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.

5

In so acting, as described in Paragraph 4, above, Respondent accepted or received funds in trust (herein "trust funds") from or on behalf of borrowers, lenders, investors, buyers, sellers, and others in connection with mortgage loan and the property resale activities, as alleged herein, and thereafter from time to time made, or caused to be made, disbursements of said funds.

6

The aforesaid trust funds accepted or received by Respondent were deposited or caused to be deposited by Respondent into one or more bank accounts (herein "trust fund accounts") maintained by Respondent for the handling of trust funds at the Stockton, California, branch of Bank of America, including but not necessarily limited to:

(a) "Lokman Financial Group, Inc. Expenses Account", account number xxxxx-x7292 (herein "Bank #1");

(b) "Lokman Financial Group, Inc. Expenses Account", account number xxxxx-x1402 (herein "Bank #2"); and,

(c) "Reginald Sylvester dba Lokman Realty Group Sole Prop.", account number xxxxx-x2641 (herein "Trust #1").

FIRST CAUSE OF ACCUSATION

The allegations of Paragraphs 1 through 6 are incorporated herein by reference.

7

Between about January 23, 2009 and about June 30, 2010, Respondent initiated and processed about 464 loan modifications for various properties in California for borrowers and collected advance fees of about $394,498.00.

In connection with the collection and disbursement of said trust funds described in Paragraphs 5 through 6, above, Respondent:

(a) failed to keep a columnar record in chronological sequence of all trust funds received and disbursed from Banks #1 and #2 and Trust #1 containing all the information required by Section 2831 of Title 10, Chapter 6 of the California Code of Regulations (herein "the Regulations");

(b) failed to keep a separate record for each beneficiary or transaction for Banks #1 and #2 and Trust #1 containing all the information required by Section 10145 of the Code and Section 2831.1 of the Regulations;

(c) failed to reconcile at least once a month, the balance of all separate beneficiary or transaction records with Banks #1 and #2 and Trust #1, as required by Section 2831.2 of the Regulations;

(d) failed to place trust funds entrusted to Respondent into the hands of a principal on whose behalf the funds were received, into a neutral escrow depository, or into a trust fund account in the name of Respondent as trustee at a bank or other financial institution for Banks #1 and #2, in conformance with the requirements of Sections 10145 and 10146 of the Code and Section 2832 of the Regulations;

(e) Allowed Olivia King, an unlicensed individual, to perform real estate activities requiring a license under Respondent's dba's, Lokman and Lokman, Inc., in violation of Section 10130 of the Code;

(f) caused, suffered or permitted money of others which was received and held by Respondents in Bank #1 to be commingled with Respondent's own money and used for such purchases at KFC, Wal-Mart, Chevron gas, Dave Wongs Restaurant, Safeway Store, etc, in violation of Sections 10176(e) and (i) of the Code;

(g) failed to provide quarterly accountings to borrowers, as required by Section 10146 of the Code and Section 2972 of the Regulations; and,

(h) failed to obtain a written agreement with salesperson LaTanya D. Moore in conformance with all the requirements of Section 2726 of the Regulations.

SECOND CAUSE OF ACCUSATION

The allegations of Paragraphs 1 through 7 are incorporated herein by reference.

8

On about February 9, 2009, Respondent, through Lokman and Lokman, Inc., entered into a Contract for Services Loan Modification with Carlos Munoz (herein "Munoz") in order to obtain a loan modification for real estate located at 191 E. Heritage Dr., Mountain House, CA, and collected an advance fee in the amount of about $1,790.00 prior to submission to the Department of any or all materials used in advanced fee agreements, including but not limited to the contract form, any letters or cards used to solicit prospective sellers, and radio and television advertising, at least 10 calendar days before it was used in obtaining advance fees, in violation of Sections 10130, 10085, and 10085.5 of the Code and Section 2970 of the Regulations.

9

On about February 17, 2009, Respondent deposited the advance fee described in Paragraph 8, above, in the amount of about $1,790.00 into Bank #1, in violation of Sections 10146 and 10176 (e) and (i) of the Code.

THIRD CAUSE OF ACCUSATION

The allegations of Paragraphs 1 through 9 are incorporated herein by reference.

10

On about April 23, 2009, Respondent, through Lokman and Lokman, Inc., entered into a Contract for Services Loan Modification with Jose W. and Blanca P. Salguero (herein "the Salguero's") in order to obtain a loan modification for real estate located at 1805 Pine Oak Ct, Manteca, CA 95336, and collected an advance fee in the amount of about $795.00 prior to submission to the Department of any or all materials used in advanced fee agreements including but not limited to the contract form, any letters or cards used to solicit prospective sellers, and radio and television advertising, at least 10 calendar days before it was used in obtaining advance fee, in violation of Sections 10130, 10085, and 10085.5 of the Code and Section 2970 of the Regulations.

FOURTH CAUSE OF ACCUSATION

The allegations of Paragraphs 1 through 10 are incorporated herein by reference.

11

After about October 11, 2009, Respondent, through Lokman and Lokman, Inc., entered into Contracts for Services Loan Modification different than that which were approved by the Department and collected advance fees, in violation of Sections 10130, 10085, and 10085.5 of the Code and Section 2970 of the Regulations from the following borrowers.

Borrower	Address	Date	Amount
Carlos A. Orellana	1839 Tampa Way San Jose, CA 95122	3/8/10	$495
Joel Calizto &	740 Vermont Ave.	2/3/10	$495
Maria Lazaro	Turlock, CA 95380	2/22/10	$495

12

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondent under the following provisions of the Code and/or the Regulations:

(a) as to Paragraph 7(a) under Section 2831 of the Regulations, in conjunction with Section 10177(d) of the Code;

(b) as to Paragraph 7(b) under Section 10145 of the Code and Section 2831.1 of the Regulations, in conjunction with Section 10177(d) of the Code;

(c) as to Paragraph 7(c) under Section 2831.2 of the Regulations, in conjunction with Section 10177(d) of the Code;

(d) as to Paragraph 7(d) under Sections 10145 and 10146 of the Code and Section 2832 of the Regulations, in conjunction with Section 10177(d) of the Code;

(e) as to Paragraph 7(e) under Section 10130 of the Code, in conjunction with Section 10177(d) of the Code;

(f) as to Paragraph 7(f) under Sections 10176(e) and (i) of the Code;

(g) as to Paragraph 7(g) under Section 10146 of the Code and Section 2972 of the Regulations, in conjunction with Section 10177(d) of the Code;

(h) as to Paragraph 7(h) under Section 2726 of the Regulations, in conjunction with Section 10177(d) of the Code;

(i) as to Paragraph 8 under Sections 10130, 10085, and 10085.5 of the Code and Section 2970 of the Regulations in conjunction with Section 10177(d) of the Code;

(j) as to Paragraph 9 under Sections 10146 and 10176(e) and (i) of the Code, in conjunction with Section 10177(d) of the Code; and

(k) as to Paragraphs 10 and 11 under Sections 10130, 10085, and 10085.5 of the Code and Section 2970 of the Regulations in conjunction with Section 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 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 SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 26th day of July, 2011.