FILED

APR 12 2010

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of TERRENCE L. WHITINGTON III dba EAGLE CREST REAL ESTATE, and dba EAGLE CREST HOME LOANS, Respondent.	NO. H-10790 SF

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on February 26, 2010, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

I

FINDINGS OF FACT

1

Respondent TERRENCE L. WHITINGTON III doing business under the fictitious names of EAGLE CREST REAL ESTATE and EAGLE CREST HOME LOANS, (hereinafter "Respondent") 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 (hereinafter "the Code").

2

The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the State of California, made this Accusation against Respondent in his official capacity.

3

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

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 within the meaning of Section 10131(d) of the Code, including soliciting borrowers or lenders for or negotiating loans or collecting payments or performing 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.

FIRST CAUSE OF ACTON

5

Within the three-year period prior to the filing of the Accusation, in connection with the real estate activities described in Paragraph 4, above, Respondent claimed, demanded, charged, received, collected, and provided a written contract for advance fees from borrowers for services Respondent was to perform thereafter in obtaining modifications of loans secured or to be secured directly or collaterally by liens on the real property of borrowers including, but not limited to, the following transaction:

Borrower	**Property**	**Lender Received**	**Advance Fee Received**	**Date**
Joanne M. Vondracek	14755 Vie De Maia Magalia, California	Option One	$2,000.00	8/15/08

6

The fee described in Paragraph 5, above, constituted an "advance fee" within the meaning of Sections 10026 and 10131.2 of the Code. Said fee constituted trust funds within the meaning of Sections 10145 and 10146 of the Code.

7

Within the three-year period prior to the filing of the Accusation, in order to induce Joanne M. Vondracek, (hereinafter "borrower") to provide to Respondent the advance fee of $2,000.00 described in Paragraph 6, above, Respondent represented to borrower that: 1.) Respondent would re-negotiate the terms of the current mortgage loan secured by borrower's property, identified as 14755 Vie De Maia, Magalia, California, (hereinafter "subject property") to the lowest possible amount; 2) and, would negotiate with the lender to avoid or stop foreclosure against subject property.

8

Within the three-year period prior to the filing of this Accusation, Respondent represented to borrower that Respondent had contacted the lender, Option One, and had re-negotiated the monthly forbearance payments necessary to avoid foreclosure on the subject property and represented to borrower that she could resume her regular monthly mortgage payments of $3,048.56 to Option One in lieu of the $5,971.15 payments under the lender's forbearance agreement with borrower.

9

Respondent's representations as described in Paragraphs 7 and 8, above, were false or misleading and were known by Respondent to be false or misleading when made or were made by Respondent with no reasonable grounds for believing said representations to be true. In truth and in fact: 1.) Respondent had no intention of re-negotiating the terms of the borrower's mortgage; 2.) Respondent had not contacted Option One; and, 3.) Respondent had not re-negotiated the forbearance agreement terms.

10

Respondent failed to disclose to the borrower the true facts that: 1.) Respondent would not and did not re-negotiate any terms with the lender as promised; 2.) Respondent did not obtain new payment terms for the forbearance agreement; 3.) Option One had not agreed to permit borrower to resume regular monthly mortgage payments of $3,048.56 in lieu of the $5,971.15 payments under the lender's forbearance agreement with borrower.

11

Respondent's acts and omissions as described in Paragraphs 7, 8, 9, and 10, above, constituted misrepresentations, fraud, and dishonest dealing.

SECOND CAUSE OF ACTION

12

In connection with the collection and handling of said advance fees, Respondent failed to submit an advance fee contract to the Department prior to use as required by Sections 10085 and 10085.5 of the Code and Section 2970 of the Commissioner's Regulations.

13

In connection with the collection, receipt, and handling of the advance fee as described in Paragraph 6, above, Respondent provided to the borrower an advance fee contract that had not been submitted to, reviewed and approved by, the Department of Real Estate prior to use as required by Sections 10085 and 10085.5 of the Code and Section 2970 of Chapter 6, Title 10, California Code of Regulations (hereinafter "the Regulations").

THIRD CAUSE OF ACTION

14

Within the three-year period prior to the filing of the Accusation, in connection with the collection, receipt and handling of advance fees described in Paragraphs 6 and 7, above, Respondent was required to provide to the borrower a verified accounting of the advance fee trust funds disbursed as required by Section 10146 of the Code and containing the information required by Section 2972 of the Regulations.

15

Within the three-year period prior to the filing of the Accusation, in connection with the collection, receipt and handling of advance fees described in Paragraphs 6 and 7, above, Respondent failed to provide to the borrower the required verified accounting of the advance fee trust funds and failed to provide, including, but not limited to, any accounting expressly representing the amounts of trust funds disbursed, the date of trust fund disbursement, the commission paid, and overhead and profit.

II

DETERMINATION OF ISSUES

16

The facts alleged in Paragraphs 7, 8, 9, 10, and 11, above, are grounds for the suspension or revocation of the license and license rights of Respondents under Sections 10176(a), 10176(b), 10176(i), 10177(g), and/or 10177(j) of the Code.

17

The acts and/or omissions of Respondent described in Paragraphs 12 and 13, above, are grounds for the suspension or revocation of the license and license rights of Respondent under Sections 10085 and 10085.5 of the Code and Section 2970 of the Regulations in conjunction with Section 10177(d) of the Code.

18

The acts and omissions of Respondent described in Paragraphs 14 and 15, above, are grounds for the suspension or revocation of all licenses and license rights of Respondent under Sections 10176(i), 10177(g), and/or 10177(j) of the Code, and Section 10146 of the Code and Section 2972 of the Regulations in conjunction with Section 10177(d) of the Code.

19

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

All licenses and licensing rights of TERRENCE L. WHITINGTON III doing business under the fictitious names of EAGLE CREST REAL ESTATE and EAGLE CREST HOME LOANS, under the provisions of Part I of Division 4 of the Business and Professions Code, are revoked.

This Decision shall become effective at 12 o'clock noon on MAY 0 3 2010

DATED: MAR 3 0 2010

JEFF DAVI
Real Estate Commissioner

Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

FILED
FEB 26 2010
DEPARTMENT OF REAL ESTATE
By

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of TERENCE L. WHITINGTON, III, Respondent.	No. H-10790 SF DEFAULT ORDER

Respondent, TERENCE L. WHITINGTON, III, having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, is now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS SO ORDERED February 26, 2010

JEFF DAVI
Real Estate Commissioner

By: Charles Koenig
CHARLES W. KOENIG
Regional Manager

FLAG

MICHAEL B. RICH, Counsel
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FILED
OCT 28 2009
DEPARTMENT OF REAL ESTATE
By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of TERRENCE L. WHITINGTON III dba Eagle Crest Real Estate and dba Eagle Crest Home Loans, Respondent.	NO. H-10790 SF ACCUSATION

The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the State of California, for Causes of Accusation against TERRENCE L. WHITINGTON III doing business under the fictitious names of Eagle Crest Real Estate and Eagle Crest Home Loans, is informed and alleges as follows:

1

Respondent TERRENCE L. WHITINGTON III doing business under the fictitious names of Eagle Crest Real Estate and Eagle Crest Home Loans, (hereinafter "Respondent") 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 (hereinafter "the Code").

2

The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity.

3

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

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 within the meaning of Section 10131(d) of the Code, including soliciting borrowers or lenders for or negotiating loans or collecting payments or performing 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.

FIRST CAUSE OF ACTON

5

There is hereby incorporated in this First, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 4, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

6

Within the three period prior to the filing of this Accusation, in connection with the real estate activities described in Paragraph 4, above, Respondent claimed, demanded, charged, received, collected, and provided a written contract for advance fees from borrowers for services Respondent was to perform thereafter in obtaining modifications of loans secured or to be secured directly or collaterally by liens on the real property of borrowers including, but not limited to, the following transaction:

Borrower	**Property**	**Lender**	**Advance Fee Received**	**Date Received**
Joanne M. Vondracek	14755 Vie De Maia Magalia, California	Option One	$2,000.00	8/15/08

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7

The fee described in Paragraph 6, above, constituted an "advance fee" within the meaning of Sections 10026 and 10131.2 of the Code. Said fee constituted trust funds within the meaning of Sections 10145 and 10146 of the Code.

8

Within the three-year period prior to the filing of this Accusation, in order to induce Joanne M. Vondracek, (hereinafter "borrower") to provide to Respondent the advance fee of $2,000.00 described in Paragraph 6, above, Respondent represented to borrower that: 1.) Respondent would re-negotiate the terms of the current mortgage loan secured by borrower's property, identified as 14755 Vie De Maia, Magalia, California, (hereinafter "subject property") to the lowest possible amount; 2) and, would negotiate with the lender to avoid or stop foreclosure against subject property.

9

Within the three-year period prior to the filing of this Accusation, Respondent represented to borrower that Respondent had contacted the lender, Option One, and had re-negotiated the monthly forbearance payments necessary to avoid foreclosure on the subject property and represented to borrower that she could resume her regular monthly mortgage payments of $3,048.56 to Option One in lieu of the $5,971.15 payments under the lender's forbearance agreement with borrower.

10

Respondent's representations as described in Paragraphs 8 and 9, above, were false or misleading and were known by Respondent to be false or misleading when made or were made by Respondent with no reasonable grounds for believing said representations to be true. In truth and in fact: 1.) Respondent had no intention of re-negotiating the terms of the borrower's mortgage; 2.) Respondent had not contacted Option One; and, 3.) Respondent had not re-negotiated the forbearance agreement terms.

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11

Respondent failed to disclose to the borrower the true facts that: 1.) Respondent would not and did not re-negotiate any terms with the lender as promised; 2.) Respondent did not obtain new payment terms for the forbearance agreement; 3.) Option One had not agreed to permit borrower to resume regular monthly mortgage payments of $3,048.56 in lieu of the $5,971.15 payments under the lender's forbearance agreement with borrower.

12

Respondents' acts and omissions as described in Paragraphs 8, 9, 10, and 11, above, constituted misrepresentations, fraud, and dishonest dealing.

13

The facts alleged in Paragraphs 8, 9, 10, 11, and 12, above, are grounds for the suspension or revocation of the license and license rights of Respondent under Sections 10176(a), 10176(b), 10176(i), 10177(g), and/or 10177(j) of the Code.

SECOND CAUSE OF ACTION

14

There is hereby incorporated in this Second, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 13, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

15

In connection with the collection and handling of said advance fees, Respondent failed to submit an advance fee contract to the Department prior to use as required by Sections 10085 and 10085.5 of the Code and Section 2970 of the Regulations.

16

In connection with the collection, receipt, and handling of the advance fee as described in Paragraph 6, above, Respondent provided to the borrower an advance fee contract that had not been submitted to, reviewed and approved by, the Department of Real Estate prior

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to use as required by Sections 10085 and 10085.5 of the Code and Section 2970 of Chapter 6, Title 10, California Code of Regulations (hereinafter "the Regulations").

17

The acts and/or omissions of Respondent described in Paragraphs 15 and 16, above, are grounds for the suspension or revocation of the license and license rights of Respondent under Sections 10085 and 10085.5 of the Code and Section 2970 of the Regulations in conjunction with Section 10177(d) of the Code.

THIRD CAUSE OF ACTION

18

There is hereby incorporated in this Third, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 17, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

19

Within the three-year period prior to the filing of this Accusation, in connection with the collection, receipt and handling of advance fees described in Paragraphs 6 and 7, above, Respondent was required to provide to the borrower a verified accounting of the advance fee trust funds disbursed as required by Section 10146 of the Code and containing the information required by Section 2972 of the Regulations.

20

Within the three-year period prior to the filing of this Accusation, in connection with the collection, receipt and handling of advance fees described in Paragraphs 6 and 7, above, Respondent failed to provide to the borrower the required verified accounting of the advance fee trust funds and failed to provide, including, but not limited to, any accounting expressly representing the amounts of trust funds disbursed, the date of trust fund disbursement, the commission paid, and overhead and profit.

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The acts and omissions of Respondent described in Paragraphs 19 and 20, above, are grounds for the suspension or revocation of all licenses and license rights of Respondent under Sections 10176(i), 10177(g), and/or 10177(j) of the Code, and Section 10146 of the Code and Section 2972 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 license(s) and license rights of Respondents 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.

E. J. HABERER II
Deputy Commissioner

Dated at Oakland, California
this 22nd day of October, 2009