DEPARTMENT OF REAL ESTATE
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Sacramento, CA 95818-7007

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FILED

MAY - 6 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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| In the Matter of the Accusation of<br><br>BAYCAL CAPITAL SERVICES, INC.<br>and NATELLA R. BELICHEVA,<br><br>Respondents. | DRE No. H-10798 SF<br><br>STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER |

It is hereby stipulated by and between BAYCAL CAPITAL SERVICES, INC., (Respondent), NATELLA R. BELICHEVA, (Respondent) and their attorney, N. Maxwell Njelita, and the Complainant, acting by and through Richard K. Uno, Counsel for the Department of Real Estate; as follows for the purpose of settling and disposing of the Accusation filed on November 3, 2009, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement In Settlement and Order.

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2. Respondents have received, read and understand the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate in this proceeding.

3. On November 18, 2009, Respondents filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of Defense they will thereby waive their right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that they will waive other rights afforded to them in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. Respondents, pursuant to the limitations set forth below, hereby admit that the factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are true and correct and the Real Estate Commissioner shall not be required to provide further evidence of such allegations.

5. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation and Agreement In Settlement and Order as his Decision in this matter, thereby imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set forth in the below "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement In Settlement and Order, it shall be void and of no effect, and Respondents shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

6. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation and Agreement In Settlement and Order shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of

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Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers, and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the acts and/or omissions of Respondents, as described in the Accusation, constitute grounds for the suspension or revocation of the licenses and license rights of Respondent BAYCAL CAPITAL SERVICES, INC. under the provisions of Sections 10176(a), (e) and (i), and 10177(d) of the Business and Professions Code (the Code) and constitute grounds for the suspension or revocation of the licenses and license rights of Respondent NATELLA R. BELICHEVA under the provisions of Sections 10177(d) and (h) of the Code.

ORDER

The real estate broker license and license rights of Respondent NATELLA R. BELICHEVA (BELICHEVA) under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Order; provided, however, that if Respondent petitions, said suspension shall be stayed upon condition that:

1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of $75.00 per day for thirty (30) days of the suspension for a total monetary penalty of $2,250.00. Upon receipt of payment, thirty (30) days of the suspension will then be stayed.

2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

3. No further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision in this matter.

4. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate

execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

5. If Respondent pays the monetary penalty, the remaining thirty (30) days of said sixty (60) day suspension will be stayed, and if no further cause for disciplinary action against the real estate license of Respondent occurs within one (1) year from the effective date of the Decision, the stay hereby granted shall become permanent.

6. BELICHEVA shall, within nine (9) months from the effective date of this Order, 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 in trust fund handling and real estate ethics as specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for hearing pursuant to the Administrative Procedure Act to present such evidence.

7. The real estate broker license and license rights of Respondent BAYCAL CAPITAL SERVICES, INC. (BCS), under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Order; provided, however, that if BCS petitions, said suspension shall be stayed upon condition that:

8. BCS pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of $75.00 per day for thirty (30) days of the suspension for a total monetary penalty of $2,250.00. Upon receipt of payment, thirty (30) days of the suspension will then be stayed.

9. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

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10. No further cause for disciplinary action against the real estate license of BCS occurs within one year from the effective date of the Decision in this matter.

11. If BCS fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the BCS shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

12. If BCS pays the monetary penalty, the remaining thirty (30) days of said sixty (60) day suspension will be stayed, and if no further cause for disciplinary action against the real estate license of BCS occurs within one (1) year from the effective date of the Decision, the stay hereby granted shall become permanent.

13. Respondents BELICHEVA and BCS shall be jointly and severally liable to pay for the cost of the audits No. OK 080143 and OK 090009, in the amount of $3,206.10. Said payment shall be in the form of a cashiers check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter. If Respondents fail to satisfy this condition, the Commissioner may order the suspension of Respondents' licenses until this sum is paid in full.

14. Respondents BELICHEVA and BCS shall be jointly and severally liable to pay for the cost of the follow up audit which shall be less than or equal to $3,206.10. Said payment shall be in the form of a cashiers check or certified check made payable to the Recovery Account of the Real Estate Fund. Respondent shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. If Respondents fail to satisfy this condition, the Commissioner may order the suspension of Respondents' licenses until this sum

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sum is paid in full.

4/6/10
DATED

RICHARD K. UNO, Counsel
DEPARTMENT OF REAL ESTATE

* * *

I have read the Stipulation and Agreement In Settlement and Order and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

3/19/10
DATED

NATELLA R. BELICHEVA
Respondent BELICHEVA

For BAYCAL CAPITAL SERVICES, INC:

3/19/10
DATED

by NATELLA R. BELICHEVA
Respondent BAYCAL CAPITAL SERVICES, INC.

*I have reviewed this Stipulation and Agreement as to form and content and have advised my clients accordingly.*

3/23/10
DATED

N. MAXWELL NJELITA
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on MAY 27 2010.

IT IS SO ORDERED 4/26/2010.

JEFF DAVI
Real Estate Commissioner

RICHARD K. UNO, Counsel (SBN 98275)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-2380

FILED

NOV - 3 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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| In the Matter of the Accusation of<br><br>BAYCAL CAPITAL SERVICES, INC.,<br>and NATELLA R. BELICHEVA,<br><br>Respondents. | NO. H-10798 SF<br><br>ACCUSATION |

The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of the State of California, for Accusation against Respondent BAYCAL CAPITAL SERVICES, INC. (BCS), and Respondent NATELLA R. BELICHEVA, (BELICHEVA), is informed and alleges as follows:

1

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

2

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

3

BCS is presently licensed by the Department of Real Estate (the Department) as a corporate real estate broker dba Aurora Realty and Baycal Mortgage.

4

At all times herein mentioned, BELICHEVA was licensed by the Department as the designated broker/officer of BCS. As the designated broker/officer, BELICHEVA was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of BCS for which a real estate license is required.

5

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

6

Whenever reference is made in an allegation in this Accusation to an act or omission of BCS, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with BCS committed such act or omission while engaged in furtherance of the business or operations of BCS and while acting within the course and scope of their corporate authority and employment.

FIRST CAUSE OF ACTION

7

Beginning August 11, 2009, and continuing intermittently through August 27, 2009, an audit was conducted of BCS's main office located at 21551 Foothill Boulevard,

Hayward, California and at the Oakland District Office of the Department of Real Estate located at 1515 Clay Street, Suite 702, Oakland, California, where the auditor examined records for the period of January 1, 2008 through July 31, 2009 (the audit period).

8

While acting as a real estate broker as described in Paragraph 5, above, and within the audit period, BCS accepted or received funds in trust (trust funds) from or on behalf of lenders, investors, borrowers and others in connection with mortgage loan brokerage activities, deposited or caused to be deposited those funds into a bank account maintained by BCS at WaMu/JPMorgan Chase Bank, 3449 Castro Valley Boulevard, Castro Valley, California 94546, Account #0180-098873-5, entitled "Baycal Capital Services, Inc. dba Aurora Realty, Baycal Mortgage" (Account #1), and thereafter from time to time made disbursements of said trust funds.

9

In the course of the activities described in Paragraph 8, in connection with the collection and disbursement of trust funds, Respondents:

(a) Failed to designate Account #1 as a trust account as required by Section 2832 of Title 10, California Code of Regulations (Regulations);

(b) Failed to identify from whom all trust funds were received on the record of all trust funds deposited into and disbursed from Account #1 as required by Section 2831 of the Regulations;

(c) Failed to maintain separate beneficiary records for Account #1 as required by Section 2831.1 of the Regulations;

(d) Failed to keep adequate records to determine trust fund accountability as of July 31, 2009 as required by Section 10145 of the Code;

(e) Failed to perform and/or maintain records of the monthly reconciliation of the balance of all beneficiary records as required by Section 2831.2 of the regulations;

(f) Failed to maintain a Record of All Trust Funds Received-Not Placed in Brokers Trust Account as required by Section 2831(a) (6) of the Regulations;

(g) Failed to handle an earnest money deposit for real property known as 9696 Thunderbird in a timely manner as required by Section 2832(d) of the Regulations;

(h) Deposited trust funds into Account #1 which held non trust funds, thereby commingling in violation of Section 2835 of the Regulations and Section 10176(e) of the Code;

(i) Collected an advance fee for a loan modification without having obtained prior approval of the advance fee agreement as required by Section 10085 of the Code;

(j) Failed to deposit the advance fee in a trust account as required by Section 10146 of the Code since Account #1 was not designated as a trust account;

(k) Failed to furnish a verified copy of the accounting of the advance fee at the end of each quarter as required by Section 2972 of the Regulations and Section 10146 of the Code;

(l) Failed to provide Mortgage Loan Disclosure Statements or a Good Faith Estimate to borrowers (below) as required by Section 10240 of the Code;

| Name | Amount | Date Closed |
|---|---|---|
| G. & A. Levchenko | $556,500.00 | 03/19/09 |
| R. Kimball/J. Park | $417,000.00 | 12/10/08 |
| A. & H. Parker | $184,900.00 | 04/10/09 |
| A. Peyko | $340,000.00 | 05/26/09 |

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(m) Failed to set forth their license number on a MLDS issued to Yuriy and Irina Layko for real property known as 3402 Manchester Common, Fremont, as required by Section 10236.4 of the Code and

(n) Failed to retain possession of Nana D. Gigolaeva's and Steve Koffeld's real estate salesperson licenses as required by Section 2753 of the Regulations and Section 10160 of the Code.

10

The acts and/or omissions of BCS as alleged above violate Sections 2715, 2753, 2831, 2831.1, 2831.2, 2832 and 2972 of the Regulations and Sections 10085, 10145, 10146, 10160, 10176(e), 10236.4, and 10240 of the Code.

11

The acts and/or omissions of BCS as alleged above are grounds for discipline under Sections 10176(e) and 10177(d) of the Code.

SECOND CAUSE OF ACTION

12

Complainant refers to Paragraphs 1 though 11, above, and incorporates them herein by reference.

13

On at least three occasions, BCS while representing buyers, indicated in the Residential Purchase Agreement that the Earnest Money Deposit had been given to BCS as set forth below:

| Buyer | Property | Amount | Represented Date Received |
|---|---|---|---|
| Parkers | 1820 Catalpa | $ 2,500.00 | 02/15/09 |
| Presleys | 5656 Musick Avenue | $ 1,000.00 | 06/09/08 |
| Lii Xu Fam. Trust | 562 Marin Avenue | $10,000.00 | 12/31/08 |

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14

In fact, for each of the transactions above, Respondent was not in possession of the Earnest Money Deposit, which was made at later dates as set forth: Parkers on 03/18/09, Presleys on 09/18/08 and Lii Xu Family Trust on 01/15/09. In each case, the check was sent to the title company, rather than handed to Respondent.

15

The representations made by Respondent to the sellers that it was in possession of the Earnest Money Deposits set out above were false, and Respondent knew that they were false when those representations were made. Respondent represented that it was in possession of the Earnest Money Deposits to induce the buyers to accept the offers of buyers.

16

The acts/omissions described in Paragraphs 12 through 15, above, are grounds for discipline under Sections 10176(a) and/or (i) of the Code.

THIRD CAUSE OF ACTION

17

Complainant refers to Paragraphs 1 through 16, above, and incorporates them herein by reference.

18

At all times herein above mentioned, BELICHEVA was responsible, as the designated broker officer of BCS, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. BELICHEVA failed to exercise reasonable supervision and control over the mortgage loan brokering activities of BCS. In particular, BELICHEVA permitted, ratified and/or caused the conduct described in the First and Second Causes of Action, above, to occur, and failed to take reasonable steps, including but not limited to the handling of trust funds, supervision of employees, and the implementation of policies, rules, procedures, and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

The above acts and/or omissions of BELICHEVA violates Section 10159.2 of the Code and Section 2725 of the Regulations and constitute grounds for disciplinary action under Section 10177(h) 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 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 Real Estate Commissioner

Dated at Oakland, California,
this 30th day of October, 2009.