

FILED

JUL 21 2011

DEPARTMENT OF REAL ESTATE

By *S. Jones*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	Case No. H-10971 SF
CENTURY 22 REAL ESTATE INC.,)	
HOMAYOUN RAHNOMA and)	OAH No. 2010091085
PHILLIP MEI TONG,)	
)	
Respondents.)	
_____)	

DECISION

The Proposed Decision dated June 17, 2011, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

AUG 10 2011 This Decision shall become effective at 12 o'clock noon on _____

IT IS ORDERED

7/20/11

BARBARA J. BIGBY
Acting Real Estate Commissioner

Wayne S. Bell

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

CONTEMPO REALTY GROUP, INC.,
Formerly Known As and Successor in Interest to
CENTURY 22 REAL ESTATE, INC., and
HOMAYOUN RAHNOMA, and
PHILLIP MEI TONG,

Respondents.

Case No. H-10971 SF

OAH No. 2010091085

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on February 8 and May 10, 2011, in Oakland, California.

Department of Real Estate Counsel Kenneth C. Espell represented complainant E.J. Haberer II, Deputy Real Estate Commissioner, State of California.

Respondent Phillip Mei Tong, appearing on his own behalf and on behalf of respondent Contempo Realty Group, Inc., was self-represented. Respondent Homayoun Rahnoma was self-represented.

The matter was submitted on May 10, 2011.

FACTUAL FINDINGS

License History & Background

1. Respondents Contempo Realty Group, Inc. (Contempo), Homayoun Rahnoma (Rahnoma) and Phillip Mei Tong (Tong) are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).
2. Contempo holds a corporate real estate broker license, and Tong is the designated officer/broker. The license was originally issued by the Department of Real Estate on June 16, 2006, to Century 22 Real Estate & Mortgage, Inc., with Tong as the designated officer/broker. On March 4, 2009, the corporation name was changed to Century 22 Real Estate, Inc., and the fictitious name Contempo Realty Group was added. On July 7,

2010, the corporation name was changed to Contempo Realty Group, Inc. Contempo is the successor in interest to Century 22 Real Estate, Inc., and Century 22 Real Estate & Mortgage, Inc. (The corporation is referred to herein as Contempo even if it had another name at the time.)

3. Tong holds an individual real estate broker license, which was issued on January 10, 1990. As the designated officer/broker of Contempo, Tong was responsible for supervising the activities of Contempo officers, agents, real estate licensees and employees for which a license is required. (Bus. & Prof. Code, § 10159.2, subd. (a).)

4. Rahnoma holds a real estate salesperson license, which was issued on March 3, 2007. He is the President/CEO of Contempo.

5. Coralia F. Camacho (not a respondent) is a real estate salesperson working under Contempo's broker license. She is also the Vice-President/CFO of Contempo. On April 1, 2006, Rahnoma and Camacho entered into a 50/50 partnership agreement to operate Contempo, with Rahnoma to be in charge of the Mortgage Department and Camacho to be in charge of the Real Estate Department.

On June 16, 2006, Contempo entered into an independent contractor agreement with Tong to perform services for Contempo. Rahnoma signed the agreement on behalf of Contempo.

Tong claims that the original intent was for him to have a 30 percent ownership in Contempo, but this ownership interest was not reflected in any written documentation until about a year ago.

6. At all times mentioned herein, respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Business and Professions Code section 10131, subdivisions (a), (d) and (e). Contempo operated a mortgage loan brokerage and residential property resale business in which loans were arranged, negotiated, processed and consummated on behalf of others, and promissory notes or interests therein were sold or purchased on behalf of others, for compensation or in expectation of compensation.

First Cause of Action – Audit Violations

7. In July and August 2009, department auditor Jayendra Barbhैया conducted an audit of Contempo. The audit covered the period of January 1, 2008, to June 30, 2009. Barbhैया reviewed Contempo's records for a random sampling of transactions, including four mortgage loan transactions and three sales transactions. The violations Barbhैया found during his audit are discussed below.

EARNEST MONEY DEPOSIT CHECKS

8. Contempo failed to place two earnest money deposit checks into a neutral depository account within three business days following acceptance of the offer.

In connection with the purchase of property in Fremont where Contempo represented buyers Amarpal S. Narang and Anju Narang, the purchase offer was accepted by the seller on June 5, 2008. The buyers' personal check for the \$50,000 deposit, dated June 5, 2008, was not received by Old Republic Title Company until June 19, 2008.

In connection with the purchase of property in San Leandro where Contempo represented buyer Angela R. Dowdy, the purchase offer was accepted by the seller on April 20, 2009. The buyer's cashier's check for the \$5,000 deposit, dated April 14, 2009, was not received by First American Title Company until May 1, 2009. (The cashier's check apparently replaced a personal check from the buyer for \$5,000, payable to "Title Co.," written on April 9, 2009, the date of the purchase offer.)

9. Contempo failed to record in its record of trust funds received but not placed in a trust account an earnest money deposit check of \$30,000 collected from buyers George Bravo and Gloria Bravo for a property in Hayward. The check, dated August 18, 2008, was received by First American Title on August 19, 2008.

NON-COMPLIANCE WITH MLDS REQUIREMENTS

10. In connection with the application of George Bravo and Gloria Bravo for a loan on the Hayward property, Contempo failed to deliver a Mortgage Loan Disclosure Statement (MLDS) to the borrowers within three business days of the completed loan application. The loan application was dated August 18, 2008, and the MLDS was dated August 26, 2008.

11. On Contempo's MLDS for the Bravo loan on the Hayward property, the "No" box was checked after "Any Additional Compensation from Lender." Contempo failed to disclose the \$2,975 yield spread premium (YSP) it received from the lender on the loan. (The YSP was listed on the settlement statement when the loan closed.) Even if the YSP amount was unknown at the time the MLDS was completed, the "Yes" box should have been checked.

12. The MLDS for borrowers George Bravo and Gloria Bravo on a property in Concord did not include Contempo's license number. The MLDS form Contempo used had a space for the license number but this was left blank.

13. The MLDS documents for the following three borrowers included Tong's individual broker license number rather than Contempo's corporate license number: George Bravo and Gloria Bravo (on the Hayward property); Cindy M. Rocha; and Juan Alvarado and Teresa Alvarado.

14. The MLDS forms that Contempo used for the Bravo loans on the Hayward property and the Concord property were outdated and did not incorporate the changes made in the revised MLDS form RE 883 (Rev. 8/08).

LOAN MODIFICATION SERVICES

15. From at least December 2008 to June 2009, Contempo (known during that time as Century 22 Real Estate & Mortgage, Inc., or Century 22 Real Estate, Inc.) offered loan modification services to clients. Contempo charged loan modification fees in three stages, and clients were required at the outset to sign three contracts, titled "Mortgage Modification Agreement Stage 1: Education, Consultation and Document filing," "Mortgage Modification Agreement Stage 2: Submission of Modification Package to Lender(s)," and "Mortgage Modification Agreement Stage 3: Negotiation and Resolution of Package to Lender(s)." During the exit interview after the department's audit, respondents provided the following summary of the loan modification process and the fees they charged:

Phase One:^[1]

Education, Consultation and Document Preparation:

This is the initial education, consultation and Document Preparation with Client. Century 22 Real Estate Inc. shall take in the basic loan and financial information of the Client in order to pre-qualify Client to determine if they are a possible candidate for modification. The Consultation shall be performed prior to Execution of the Agreement, and the Consultation Fee shall only become due if Client executes the Agreement.

\$950.00 (This fee, collected for services rendered are non-refundable) shall be paid after Education, Consultation and Document Preparation Services have been rendered. [Sic.]

Phase Two:

We send the package along with the LOC right away after the client has signed the agreement to our Processing Center in Livermore via e-mail.

The Processing center in Livermore will submit the LOC (Letter of Consent) to the Lender and then submit the docs. to the Lender.

\$1,995.00 (This fee, collected for services rendered are non-refundable after cancellation notice due date) shall be paid after the LOC and the package have been submitted to the Lender. This amount is refundable within 5 (five) business days as of submission date of the LOC. [Sic.]

¹ Contempo used "Phase" and "Stage" interchangeably.

Phase Three:

The Loan Modification approvals are being sent to the Borrowers directly and they contact us to inform us that they have received a package/approval.

\$1,000.00 (This fee, collected for a service rendered is non-refundable) shall be paid after any (first or second loan) of the loan Modification has been approved by the lender. [Sic.]

Contempo contracted with Al Isola, located in Livermore, to process the loan modifications for its clients. In their contract dated October 1, 2008, Contempo agreed to pay Isola the following processing fees for loan modifications: \$350 - \$550 for the first phase; \$750 - \$950 for the second phase; and \$300 - \$500 for the last phase.

After the department's audit, Contempo ceased offering loan modification services.

16. Contempo charged and collected fees from clients for loan modification services, and deposited those fee payments (money orders or checks) into Account #1 (see Finding 19). The particulars of the payments are set forth below:

Payment date	Client	Amount	Deposit date
12/10/08	Kathy Kenkel	\$1,900	12/10/08
12/15/08	Kathy Kenkel	\$2,199	12/19/08
12/30/08	Dennis Meydam	\$950	12/31/08
1/2/09	Martin Zavala	\$450	1/5/09
1/2/09	Martin Zavala	\$500	1/5/09
1/14/09	Alma Zavala	\$499	1/14/09
1/14/09	Alma Zavala	\$500	1/14/09
1/14/09	Alma Zavala	\$500	1/14/09
1/14/09	Alma Zavala	\$500	1/14/09
1/7/09	Masood Mir	\$1,990	1/15/09
12/31/08	Dennis Meydam	\$1,990	1/15/09
1/16/09	Rolando Sanchez & Ana Avila	\$950	1/17/09
1/23/09	Belinda Goins	\$950	1/24/09
1/23/09	Rolando Sanchez & Ana Avila	\$1,000	1/24/09
1/21/09	Marilou Neri	\$1,990	1/24/09
1/30/09	Rolando Sanchez & Ana Avila	\$990	2/2/09
1/29/09	Belinda Goins	\$1,000	2/2/09
2/6/09	Belinda Goins	\$950	2/12/09
3/3/09	Marilou Neri	\$1,000	3/3/09
4/3/09	Marilou Neri	\$950	4/4/09
4/23/09	Dennis Meydam	\$1,000	4/24/09

4/30/09	Marilou Neri	\$1,990	4/30/09
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17. Complainant contends that the fees Contempo charged for loan modification services were advance fees, and its loan modification agreements were advance fee agreements subject to review by the commissioner prior to use. (Contempo did not submit its loan modification agreements to the commissioner or obtain a "No Objection Letter" from him.) Respondents contend that their loan modification fees were not advance fees, because their loan modification services were broken into three stages and clients were not required to pay the fees for each stage until after the services were performed.

Business and Professions Code section 10085.5, subdivision (a), which has not changed since 2008, provides:

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.

Although Business and Professions Code section 10085 was amended effective October 11, 2009 (S.B. 94; Stats. 2009, ch. 630), those amendments did not affect the provisions authorizing the commissioner to "require that any or all materials used in obtaining advance fee agreements . . . be submitted to him or her at least 10 calendar days before they are used" and to "determine the form of the advance fee agreements." Prior to the statutory changes of S.B. 94, the department provided on its website an exemplar advance fee agreement for loan modification services.

Prior to October 2009, Business and Professions Code section 10026 defined "advance fee," in relevant part, as "a fee claimed, demanded, charged, received, collected or contracted from a principal . . . to negotiate loans on . . . real estate." This section was amended in October 2009, and in 2010 it was repealed and a new section reenacted. Section 10026, subdivision (a), now provides, in relevant part:

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, . . . 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. [Italics added.]*

Business and Professions Code section 10085.6 was enacted effective October 11, 2009, and in subdivision (a) it provides:

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.

Senior Deputy Real Estate Commissioner Terrence Patterson was a member of the California Loan Modification Fraud Task Force, a group organized by the department in late 2008 or early 2009, and he participated with auditor Jayendra Barbhaya in the August 2009 exit interview with respondents. Patterson testified that, in his opinion, Contempo's loan modification agreement constituted an advance fee agreement under the laws in effect at the time, even though the agreement was broken into three stages with a separate agreement and fee for each stage. This is because the service which the client is seeking is loan modification, not some part of the processing of the loan modification, and the service is not completed before payment of fees is required.

Complainant is persuasive in his contention that even under the law prior to the October 2009 legislative changes, the fees Contempo charged for loan modification services were advance fees, and its loan modification agreements were advance fee agreements subject to review by the commissioner. The fracturing of the loan modification service into separate stages, with separate agreements (signed at the same time), created only a legal fiction that clients were seeking the separate service components for which they were charged upon completion. The evidence did not establish the origin of Contempo's three-stage loan modification agreement, but it appears to have been structured to evade requirements for the handling of advance fees and the commissioner's review of advance fee agreements. Nevertheless, the lack of explicit statutory provisions subsequently enacted makes respondents' claims of exemption from advance fee requirements somewhat plausible, even though not legally meritorious.

18. Because Contempo's loan modification agreement constituted an advance fee agreement, payments made under these agreements prior to completion of the loan modification were advance fees. Under Business and Professions Code section 10146,

advance fees are trust funds (subject to general requirements for handling of trust funds) for which the broker must furnish each principal an accounting on a quarterly basis and when the contract has been completely performed. California Code of Regulations, title 10, section 2972, specifies what information shall be included in advance fee accountings. Respondents' erroneous belief that they were not subject to advance fee requirements caused them not to provide the clients listed in Finding 16 with such accountings for payments made prior to completion of the loan modification.

19. Contempo maintained an account for the handling of business funds at Chase/Washington Mutual Bank, entitled Century 22 Real Estate & Mortgage, Inc., account number 196-310165-4 (Account #1).² Because advance fees for loan modification services were deposited into Account #1, this account was a trust account and should have been designated as a trust account in the name of the broker as trustee. (Cal. Code Regs., tit. 10, § 2832, subd. (a).) Account #1 was not designated as a trust account because respondents did not think they needed a trust account, i.e., they did not think the loan modification fees were advance fee trust funds.

20. Respondents' erroneous belief that they were not subject to advance fee and trust fund requirements also caused Contempo to commit the following violations:

- a. Contempo commingled advance fee trust funds with broker funds in Account #1.
- b. Contempo failed to keep a record of the advance fee trust funds received, with all the information required by California Code of Regulations, title 10, section 2831.
- c. Contempo failed to maintain, for all advance fee trust funds deposited in Account #1, a separate record for each beneficiary or transaction, as required by California Code of Regulations, title 10, section 2831.1.

Second Cause of Action – Negligence and/or Incompetence

21. Respondents demonstrated negligence and/or incompetence in performing their duties as real estate licensees, by reason of the matters set forth in Findings 8 through 20 above. (Respondent Rahnoma was the Contempo representative in almost all of the transactions referenced in Findings 8 through 16.)

² Account #1 was opened on April 25, 2006. The signatories on the account were Homayoun Rahnoma and Coralia Camacho.

Third Cause of Action – Failure to Supervise

22. As the designated officer/broker of Contempo, Tong failed to exercise reasonable supervision and control over the activities of Contempo and Rahnoma, in that he failed to ensure full compliance with the Real Estate Law.

23. Besides Tong, Rahnoma and Camacho, there is only one other real estate licensee working for Contempo who is very active. Another three or four licensees have done little, if any, business. Tong maintains that Rahnoma and Camacho are meticulous with their paperwork and “very honorable.” Rahnoma is the office manager, and he helps Tong make sure that documents are completed properly.

Fourth Cause of Action – Deceptive Advertisement

24. On or about December 1, 2010, Contempo caused to be mailed about 280 flyers to Alameda County homeowners whose names and addresses had been obtained from the “Foreclosure Radar” website. Rahnoma had the idea to mail these flyers to people getting close to foreclosure, hoping that the solicitations would lead to real estate listings. The flyer stated:

**STOP OR PREVENT FORECLOSURE
YOU ARE IN DANGER OF FORECLOSURE!
Call NOW before it is too late!
FREE Loan Modification Consultation, FREE Attorney
Assisted Short Sale, and More options to avoid DEFICIENCY
JUDGMENT & 1099C [sic]**

Except for “DRE Lic. 01524659” (Contempo’s corporate broker license number) being included on the flyer, neither the flyer nor the envelope in which it was mailed identified Contempo as the source of the flyer. The return address on the envelope identified the sender as:

Foreclosure Prevention Dept
County of Alameda, State of California
3563 Investment Blvd #2, Hayward CA 94545

Rahnoma came up with the name Foreclosure Prevention Department, and he had arranged for an attorney give legal advice to anyone who responded to the flyer. He was not going to charge for loan modification consultations. Rahnoma did not show the flyer and envelope to Tong before he mailed it out. Rahnoma testified that Tong told him not to mail the flyer, but it was too late. Tong believes the original idea was to make the return address on the envelope look like a government agency. These flyers generated no real estate listings or other business for Contempo.

25. Business and Professions Code section 17533.6 provides, in relevant part:

(a) It is unlawful for any person, firm, corporation, or association that is a nongovernmental entity to solicit information, or to solicit the purchase of or payment for a product or service, or to solicit the contribution of funds or membership fees, by means of a mailing, electronic message, or Internet Web site that contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any state or local government connection, approval, or endorsement, unless the requirements of paragraph (1) or (2) have been met, as follows:

(1) The nongovernmental entity has an expressed connection with, or the approval or endorsement of, a state or local government entity, if permitted by other provisions of law.

(2) The solicitation meets both of the following requirements:

(A) The solicitation bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other type on its face, the following notice:

“THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENTAL AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT.”

(B) In the case of a mailed solicitation, the envelope or outside cover or wrapper in which the matter is mailed bears on its face in capital letters and in conspicuous and legible type, the following notice:

“THIS IS NOT A GOVERNMENT DOCUMENT.”

(b) [Omitted.]

Contempo's flyer and envelope did not contain the disclaimers set forth in this statute.

26. Contempo's flyer and envelope were deceptive and misleading because they did not disclose the origin of the solicitation and the return address implied that the flyer was from an Alameda County government department or that the sender's services were recommended by such a department. Rahnoma denies any intent to mislead the recipients of the flyer, blaming problems with the wording on the fact that English is not his first language. However, Rahnoma's failure to identify Contempo as the source of the flyer and the use of "Foreclosure Prevention Dept, County of Alameda, State of California" in the return address cannot be explained by a claimed lack of fluency in the English language.

LEGAL CONCLUSIONS

First Cause of Action – Audit Violations

EARNEST MONEY DEPOSIT CHECKS

1. **Finding 8:** Contempo's failure to place two earnest money deposit checks into a neutral depository account within three business days following acceptance of the offer violated California Code of Regulations, title 10, section 2832, subdivision (d), and Business and Professions Code section 10145. Cause for discipline of Contempo's license exists under Business and Professions Code section 10177, subdivision (d) (willful disregard or violation of the Real Estate Law or regulations promulgated under the Real Estate Law).

2. **Finding 9:** California Code of Regulations, title 10, section 2831, subdivision (a), requires a broker to "keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal." For trust funds not deposited in an account, the record must include the identity of the other depository and the date the funds were forwarded (subd. (a)(6)). Contempo's failure to keep such a record for the \$30,000 deposit check collected from buyers George Bravo and Gloria Bravo violated this regulation and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

NON-COMPLIANCE WITH MLDS REQUIREMENTS

3. **Finding 10:** Business and Professions Code section 10240, subdivision (a), requires a broker who negotiates a loan secured by real property to provide the borrower a written statement containing all the information required by section 10241. This written statement is known as a Mortgage Loan Disclosure Statement (MLDS) and must be delivered to the borrower within three business days of the completed loan application. Contempo's failure to timely deliver an MLDS to borrowers George Bravo and Gloria Bravo violated this section and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

4. **Finding 11:** Business and Professions Code section 10241 requires the MLDS to include, among other items, the following:

(a) The estimated maximum costs and expenses of making the loan, which are to be paid by the borrower, including but not limited to the following:

- (1) Appraisal fees.
- (2) Escrow fees.
- (3) Title charges.
- (4) Notary fees.
- (5) Recording fees.
- (6) Credit investigation fees.

* * *

(b) The total of the brokerage or commissions contracted for, or to be received by, the real estate broker for services performed as an agent in negotiating, procuring, or arranging the loan or the total of loan origination fees, points, bonuses, and other charges in lieu of interest to be received by the broker if he or she elects to act as a lender rather than agent in the transaction.

Contempo's failure to disclose on the MLDS for the Bravo loan the YSP it received from the lender violated Business and Professions Code section 10241 and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

5. Findings 12 and 13: Business and Professions Code section 10236.4, subdivision (b), provides that the disclosures required by section 10240 (the MLDS) shall include the licensee's license number. Contempo's failure to include its license number on the MLDS documents for the two Bravo loans, the Rocha loan and the Alvarado loan violated this section and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

6. Finding 14: Business and Professions Code section 10240, subdivision (a), requires the MLDS to contain all the information required by section 10241, and section 10241 provides that the form of the MLDS shall be approved by the commissioner. California Code of Regulations, title 10, section 2840, identifies in subdivision (a) the current revision of forms RE 882 and RE 883, and in subdivision (c) provides that a real estate broker must obtain the prior written approval of the commissioner in order to use a different form.

Contempo's use of outdated MLDS forms on the Bravo loans violated Business and Professions Code section 10240, subdivision (a), and California Code of Regulations, title 10, section 2840, and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

LOAN MODIFICATION SERVICES

7. Findings 16 and 17: Contempo's failure to submit its loan modification agreements (as advance fee agreements) to the commissioner or obtain a "No Objection Letter" from him violated Business and Professions Code section 10085, and Contempo's charging and collection of advance fees pursuant to these agreements violated Business and Professions Code section 10085.5. Cause for discipline of Contempo's license exists under Business and Professions Code section 10177, subdivision (d).

8. Finding 18: The accusation alleges that Contempo "[f]ailed to provide principals with advance fee accountings on a quarterly basis and when contracts were

completed in violation of Section 2972 of the Regulations.” Contempo did fail to provide such accountings, but the violation was of Business and Professions Code section 10146, which was not cited for this allegation. California Code of Regulations, title 10, section 2972, simply specifies what information shall be included in advance fee accountings. Cause for license discipline was not established.

9. Finding 19: Contempo’s failure to properly designate Account #1 as a trust account violated California Code of Regulations, title 10, section 2832, subdivision (a), and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

10. Finding 20a: Contempo’s commingling of advance fee trust funds with broker funds in Account #1 constitutes cause for discipline of its license under Business and Professions Code section 10176, subdivision (e). The accusation also alleges a violation of California Code of Regulations, title 10, section 2836, but this regulation pertains to subdivider records. (California Code of Regulations, title 10, section 2835, which was not cited, prohibits commingling except as specified in that regulation.)

11. Finding 20b: Contempo’s violation of California Code of Regulations, title 10, section 2831, constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

12. Finding 20c: Contempo’s violation of California Code of Regulations, title 10, section 2831.1, constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

Second Cause of Action – Negligence and/or Incompetence

13. Finding 21: Cause to discipline the licenses of Contempo, Tong and Rahnoma exists under Business and Professions Code section 10177, subdivision (g), by reason of their negligence and/or incompetence in performing their duties as real estate licensees.

Third Cause of Action – Failure to Supervise

14. Finding 22: Cause to discipline Tong’s license exists under Business and Professions Code section 10177, subdivision (d), for his willful disregard of his responsibility under Business and Professions Code section 10159.2, subdivision (a), to supervise and control the licensed activities of Contempo and Rahnoma as necessary to secure full compliance with the Real Estate Law. Tong’s failure to exercise reasonable supervision and control over the licensed activities of Contempo and Rahnoma also constitutes cause for license discipline under Business and Professions Code section 10177, subdivision (h).

Fourth Cause of Action – Deceptive Advertisement

15. Findings 24 – 26: Contempo's mailing of the deceptive and misleading flyer and envelope to homeowners constitutes cause for discipline of its license under Business and Professions Code section 10176, subdivision (a) (making any substantial misrepresentation), and subdivision (i) (conduct constituting dishonest dealing). Contempo also violated Business and Professions Code section 17533.6, but this violation does not constitute cause for license discipline under Professions Code section 10177, subdivision (d), as alleged in the accusation. Section 10177, subdivision (d), makes it a cause for discipline to willfully disregard or violate the Real Estate Law or regulations promulgated under the Real Estate Law, and section 17533.6 is not in the Real Estate Law.

Contempo did not violate Business and Professions Code sections 10140, 10140.5 or 10140.6, as alleged in the accusation. Section 10140 pertains to a false statement or representation about land or a subdivision offered for sale or lease. Section 10140.5 pertains to an advertisement or statement "offering to assist persons to file applications for the purchase or lease of, or to locate or enter upon, lands owned by the State or Federal Government." Section 10140.6, subdivision (a), prohibits a licensee from publishing, circulating or distributing "any matter pertaining to any activity for which a real estate license is required that does not contain a designation disclosing that he or she is performing acts for which a real estate license is required." Complainant offered no evidence to explain what type of "designation" is contemplated by this provision. Without such evidence, it cannot be determined that Contempo violated this section, since "DRE Lic. 01524659" was included in the flyer.

License Discipline

15. The violations in this case warrant discipline of the licenses of Contempo, Tong and Rahnoma, but not outright license revocation. The advance fee and trust fund violations related to Contempo's loan modification services are extenuated by respondents' plausible if erroneous belief that they were exempt from advance fee requirements, and the fact that explicit statutory provisions on advance fees and loan modification had not yet been enacted. Further, there was no allegation or evidence of fraud in connection with Contempo's loan modification activities. The other audit violations are relatively minor and few in number. The deceptive flyer and envelope which Rahnoma originated raises questions about his honesty and judgment, but there was no evidence that Rahnoma has been dishonest in his mortgage loan or real estate transactions. The public interest can be adequately protected by imposing restrictions on respondents' real estate licenses.

ORDER

Contempo Realty Group, Inc., and Phillip Mei Tong

All licenses and licensing rights of respondent Contempo Realty Group, Inc., and respondent Phillip Mei Tong under the Real Estate Law are revoked; provided, however, a

restricted real estate broker license shall be issued to each respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this decision. The restricted licenses issued to respondents shall be subject to all of the provisions of Business and Professions Code section 10156.7 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 Contempo Realty Group, Inc., may be suspended prior to hearing by order of the Real Estate Commissioner in the event an officer, director or person owning or controlling 10 percent or more of respondent's stock is convicted of or enters a plea of nolo contendere to a crime which is substantially related to the activities of a real estate licensee.

The restricted license issued to respondent Phillip Mei Tong may be suspended prior to hearing by order of the Real Estate Commissioner in the event that respondent is convicted of or enters a 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 each 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. Neither respondent shall 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 two years have elapsed from the effective date of this decision.

4. Respondent Phillip Mei Tong shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that he 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 he presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Pursuant to section 10148 of the Business and Professions Code, respondent Contempo Realty Group, Inc., shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action; and b) a subsequent

audit to determine if respondent has corrected the trust fund violations found in Legal Conclusions 2, 8, 9, 10 and 11, if the Commissioner determines that such an audit is warranted. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work.

Respondent shall pay such cost within 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. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with section 11500, et seq., of the Government Code, if payment is not timely made as provided herein, or as provided in a subsequent agreement between respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

Homayoun Rahnoma

All licenses and licensing rights of respondent Homayoun Rahnoma under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if he makes application therefor and pays to the Department 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 Business and Professions Code section 10156.7 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 two 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 Department 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 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: June 17, 2011

Nancy L. Rasmussen
NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

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

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FILED

JUL 26 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 CENTURY 22 REAL ESTATE, INC.,) NO. H-10971 SF
13 HOMAYOUN RAHNOMA, and,) ACCUSATION
14 PHILLIP MEI TONG,)
15 Respondents.)

16 The Complainant, E. J. HABERER II, in his official capacity as Deputy Real
17 Estate Commissioner of the State of California, for cause of Accusation against CENTURY 22
18 REAL ESTATE, INC., (herein "CENTURY 22") and HOMAYOUN RAHNOMA (herein
19 "RAHNOMA") and PHILLIP MEI TONG (herein "MEI"), is informed and alleges as follows:

20 THE RESPONDENTS

21 1

22 At all times herein mentioned, Respondents CENTURY 22, RAHNOMA and
23 MEI (herein collectively "Respondents") were and now are licensed and/or have license rights
24 under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein
25 "the Code").

26 ////

1 2

2 At all times herein mentioned herein CENTURY 22 was and now is licensed by
3 the Department of Real Estate of the State of California (herein "the Department") as a corporate
4 real estate broker by and through MEI as its designated officer-broker.

5 3

6 At all times herein mentioned, MEI was and now is licensed by the Department as
7 a real estate broker, individually and as designated officer-broker of CENTURY 22. As the
8 designated officer-broker, MEI was at all times mentioned herein, responsible pursuant to
9 Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real
10 estate licensees and employees of CENTURY 22 for which a license is required.

11 4

12 At all times herein mentioned, RAHNOMA was and now is licensed by the
13 Department as a real estate salesperson under the employ of CENTURY 22.

14 5

15 Whenever reference is made in an allegation in this Accusation to an act or
16 omission of CENTURY 22, such allegation shall be deemed to mean that the officers, directors,
17 employees, agents and/or real estate licensees employed by or associated with CENTURY 22,
18 committed such act or omission while engaged in the furtherance of the business or operations of
19 such corporate Respondent and while acting within the course and scope of their authority and
20 employment.

21 6

22 At all times mentioned, Respondents engaged in the business of, acted in the
23 capacity of, advertised or assumed to act as real estate brokers in the State of California within
24 the meaning of Sections 10131(d) and 10131(e) of the Code, including the operation and
25 conduct of a mortgage loan brokerage business with the public wherein Respondents solicited
26 private money lenders and private borrowers for loans secured directly or collaterally by liens
27 on real property or a business opportunity, and wherein such loans were arranged, negotiated,

1 processed, and consummated by Respondent on behalf of others and wherein promissory notes
2 or interests therein were sold or purchased on behalf of another or others for compensation or in
3 expectation of compensation.

4 FIRST CAUSE OF ACTION

5 Audit Violations

6 7

7 Each and every allegation in Paragraphs 1 through 6, inclusive, above, is
8 incorporated by this reference as if fully set forth herein.

9 8

9 Beginning on July 21, 2009 and continuing intermittently until August 6, 2009,
10 an audit was conducted at CENTURY 22's main office located at 22689 Mission Blvd.,
11 Hayward, California and at the Oakland District Office of the Department of Real Estate located
12 at 1515 Clay Street, Oakland, California wherein the auditor examined records for the period
13 January 1, 2008 through June 30, 2009 (the audit period).

14 9

15 In so acting as real estate brokers, Respondents accepted or received funds in
16 trust (herein "trust funds") from or on behalf of lenders, investors, borrowers and others in
17 connection with the mortgage loan brokerage activities described in Paragraph 6, above, and
18 thereafter from time to time made disbursements of the trust funds.

19 10

20 The aforementioned trust funds accepted or received by Respondents were
21 deposited or caused to be deposited by Respondents into one or more bank accounts (herein
22 "trust fund accounts") maintained by Respondents for the handling of business trust funds and
23 business funds, including but not necessarily limited to the following accounts maintained by
24 Respondents at Chase/Washington Mutual Bank, and entitled Century 22 Real Estate &
25 Mortgage, Inc., account number 196-310165-4 ("Account #1");

26 ////

1
2 In the course of the activities described in Paragraph 6, above, for the audit
3 period:

4 (a) Account #1 was not designated as a trust account in violation of Section
5 2832 of Chapter 6, Title 10, California Code of Regulations (“Regulations”);

6 (b) For the loan modification clients listed below, Respondents claimed,
7 demanded, charged, received, collected and/or contracted for the following advance fees
8 without first obtaining a “No Objection Letter” in violation of Sections 10085 and 10085.5 of
9 the Code:

10 1. On or about December 10, 2008, the Respondents collected a check in the
11 amount of \$1,990.00 from Kathy Marie Kenkel and deposited or caused said
12 check to be deposited into Account #1 on or about December 10, 2008.

13 2. On or about December 15, 2008, the Respondents collected a check in the
14 amount of \$2,199.00 from Kathy Marie Kenkel and deposited or caused said
15 check to be deposited into Account #1 on or about December 19, 2008.

16 3. On or about December 30, 2008, the Respondents collected a check in the
17 amount of \$950.00 from Dennis Meydam and deposited or caused said check to
18 be deposited into Account #1 on or about December 31, 2008.

19 4. On or about January 2, 2009, the Respondents collected a money order in
20 the amount of \$450.00 from Martin Zavala and deposited or caused said money
21 order to be deposited into Account #1 on or about January 5, 2009.

22 5. On or about January 2, 2009, the Respondents collected a money order in
23 the amount of \$500.00 from Martin Zavala and deposited or caused said money
24 order to be deposited into Account #1 on or about January 5, 2009.

25 6. On or about January 14, 2009, the Respondents collected a money order
26 in the amount of \$499.00 from Alma Zavala and deposited or caused said
27 money order to be deposited into Account #1 on or about January 14, 2009.

1 7. On or about January 14, 2009, the Respondents collected a money order
2 in the amount of \$500.00 from Alma Zavala and deposited or caused said money
3 order to be deposited into Account #1 on or about January 14, 2009.

4 8. On or about January 14, 2009, the Respondents collected a money order
5 in the amount of \$500.00 from Alma Zavala and deposited or caused said money
6 order to be deposited into Account #1 on or about January 14, 2009.

7 9. On or about January 14, 2009, the Respondents collected a money order
8 in the amount of \$500.00 from Alma Zavala and deposited or caused said money
9 order to be deposited into Account #1 on or about January 14, 2009.

10 10. On or about January 7, 2009, the Respondents collected a check in the
11 amount of \$1,990.00 from Massod Mir and deposited or caused said check to be
12 deposited into Account #1 on or about January 15, 2009.

13 11. On or about December 31, 2008, the Respondents collected a check in the
14 amount of \$1,990.00 from Dennis Meydam and deposited or caused said check
15 to be deposited into Account #1 on or about January 15, 2009.

16 12. On or about January 16, 2009, the Respondents collected a check in the
17 amount of \$950.00 from Rolando Sanchez and deposited or caused said check to
18 be deposited into Account #1 on or about January 17, 2009.

19 13. On or about January 23, 2009, the Respondents collected a money order
20 in the amount of \$950.00 from Belinda Goins and deposited or caused said
21 money order to be deposited into Account #1 on or about January 24, 2009.

22 14. On or about January 23, 2009, the Respondents collected a check in the
23 amount of \$1,000.00 from Rolando Sanchez and Ana Avila and deposited or
24 caused said check to be deposited into Account #1 on or about January 24, 2009.

25 15. On or about January 21, 2009, the Respondents collected a check in the
26 amount of \$1,990.00 from Marilou Neri and deposited or caused said check to be
27 deposited into Account #1 on or about January 24, 2009.

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16. On or about January 30, 2009, the Respondents collected a check in the amount of \$990.00 from Rolando Sanchez and Ana Avila and deposited or caused said check to be deposited into Account #1 on or about February 20, 2009.

17. On or about February 2, 2009, the Respondents collected a money order in the amount of \$1,000.00 from Belinda Goins and deposited or caused said money order to be deposited into Account #1 on or about February 2, 2009.

18. On or about February 6, 2009, the Respondents collected a money order in the amount of \$950.00 from Belinda Goins and deposited or caused said money order to be deposited Account #1 on or about February 12, 2009.

19. On or about March 3, 2009, the Respondents collected a check in the amount of \$1,000.00 from Marilou Neri and deposited or caused said check to be deposited into Account #1 on or about March 3, 2009.

20. On or about April 3, 2009, the Respondents collected a check in the amount of \$950.00 from Marilou Neri and deposited or caused said check to be deposited into Account #1 on or about April 4, 2009.

21. On or about April 23, 2009, the Respondents collected a check in the amount of \$1,000.00 from Dennis Meydam and deposited or caused said check to be deposited into Account #1 on or about April 24, 2009.

22. On or about April 30, 2009, the Respondents collected a check in the amount of \$1,990.00 from Marilou Neri and deposited or caused said check to be deposited into Account #1 on or about April 30, 2009.

(c) Failed to place at least the following two (2) earnest money deposits into a neutral escrow depository within three (3) business days following the acceptance of an offer in violation of Section 10145 of the Code and Section 2832 of the Regulations:

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BUYER	ADDRESS	AMOUNT
Armarpal S. Narang Anuj Narang	225 Camphor Avenue Fremont, California	\$50,000.00
Angela R. Dowdy	14907 Western Avenue San Leandro, California	\$ 5,000.00

(d) Failed to record an earnest money deposit of \$30,000.00 collected from prospective buyer George Bravo on the "Record of All Trust Funds Received - Not Placed in Brokers Trust Account" in violation of Section 2831(a)(6) of the Regulations;

(e) Failed to deliver to George and Gloria Bravo a Mortgage Loan Disclosure Statement within three (3) business days from receipt of the completed loan application and for at least one transaction, failed to disclose additional compensation paid by the lender to Respondents (yield spread premium) in violation of Sections 10240 and 10241 of the Code;

(f) On at least one (1) Mortgage Loan Disclosure Statement, failed to set forth the Department of Real Estate license number (George and Gloria Bravo 08/26/2008 MLDS for property located at 954 Folsom Avenue, Hayward, CA); and on at least three (3) Mortgage Loan Disclosure Statements set forth the individual broker license of the designated officer and not the corporate license number as required and in violation of section 10236.4 of the Code:

BUYER	LOAN AMOUNT	DATE CLOSED
George Bravo and Gloria Bravo	\$170,000.00	09/03/2008
Cindy M. Rocha	\$368,000.00	03/28/2008
Juan Alvarado and Teresa Alvarado	\$265,000.00	04/08/2008

(g) For at least one transaction (George and Gloria Bravo 08/26/2008 MLDS for property located at 954 Folsom Avenue, Hayward, CA) failed to provide the correct version

1 of the Mortgage Loan Disclosure Statement in violation of Section 10240 of the Code and
2 Section 2840 of the Regulations;

3 (h) Comingled trust funds in the form of advanced fees with broker funds in
4 Account #1, in violation of Section 10176(e) of the Code and Section 2836 of the Regulations;

5 (i) Failed to maintain separate control records of all trust funds received and
6 deposited in Account #1 in violation of Section 2831 of the Regulations;

7 (j) Failed to reconcile the balance of all separate beneficiary records
8 maintained with the record of all trust funds received and disbursed for Account #1 in violation
9 of Section 2831.1 of the Regulations;

10 (k) Failed to provide principals with advance fee accountings on a quarterly
11 basis and when contracts were completed in violation of Section 2972 of the Regulations;

12 12

13 The acts and/or omissions of CENTURY 22 as alleged above violated Sections,
14 2831, 2972, 2831(a)(6), 2832, 2836, 2840 and 2972 of the Regulations, and 10085, 10085.5,
15 10145, 10236.4, 10240 and 10241 of the Code and are grounds for discipline under Sections
16 10176 and 10177(d) of the Code.

17 SECOND CAUSE OF ACTION
18 Negligence and/or Incompetence

19 13

20 Each and every allegation in Paragraphs 1 through 12, inclusive, above are
21 incorporated by this reference as if fully set forth herein.

22 14

23 The acts and omissions of Respondents CENTURY 22, MEI and/or RAHNOMA,
24 and each of them, described in Paragraphs 1 through 12, above, constitute negligence or
25 incompetence in performing acts requiring a real estate license, and therefore is cause under
26 Section 10177(g) of the Code for suspension or revocation of all licenses and license rights of
27 Respondents CENTURY 22, MEI and/or RAHNOMA, and each of them.

