FILED

AUG 13 2010

DEPARTMENT OF REAL ESTATE

By L. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of IQ SMARTER INVESTMENTS, INC., ALI MIRZAEI, and, ANTOINETTE MARIE HENDRYX Respondents.	)	NO. H-10984 SF ORDER TO DESIST AND REFRAIN (B&P Code Section 10086)

The Commissioner (Commissioner) of the California Department of Real Estate (Department) caused an investigation to be made of the activities of IQ SMARTER INVESTMENTS, INC. (IQ), ALI MIRZAEI (MIRZAEI) and ANTOINETTE MARIE HENDRYX (HENDRYX). Based on that investigation, the Commissioner has determined that IQ, MIRZAEI and HENDRYX have engaged in acts or practices constituting violations of the California Business and Professions Code and/or Title 10, Chapter 6, California Code of Regulations (Regulations). Furthermore, based on the investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

FINDINGS OF FACT

1

At all times herein mentioned, Respondents IQ, MIRZAEI and HENDRYX (collectively herein "Respondents") were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

2

At all times herein mentioned herein IQ was and now is licensed by the Department of Real Estate of the State of California as a corporate real estate broker by and through MIRZAEI and/or HENDRYX as its designated officer-broker.

3

For the period September 14, 2007 until October 2, 2008, HENDRYX was licensed by the Department as real estate broker and as the designated officer of IQ. For the period June 3, 2008 to the present, MIRZAEI was and now is licensed by the Department as a real estate broker and as the designated officer of IQ. During each brokers' tenure as the designated officer-broker of IQ, MIRZAEI and/or HENDRYX were, pursuant to Section 10159.2 of the Code, responsible for the supervision of the activities of the officers, agents, real estate licensees and employees of IQ for which a license is required.

4

Beginning on or about April 11, 2008, for the fee of $1,550.00 Norma ML paid to IQ and became contractually liable to pay to IQ on a monthly basis thereafter a preauthorized fee of $1,550.00 per month for business and mortgage consultations and assisting with the "short sale" of a certain property located in American Canyon, California. The agreement, in part, provided:

> "(Norma ML) understand(s) that the 'short sale' approval is subject to lender approval. (Norma ML) understand(s) that this is not a promise or guarantee to short sale my property. (Norma ML) understands that upon stopping of (her) mortgage payments to (her) existing bank, (Norma ML) will be at risk of foreclosure". The aforementioned payments were to continue "as long as (Norma ML) owns the property . . . and not just duration of the 'short sale' proceedings."(*sic*)

Thereafter, Norma ML canceled the agreement after paying IQ a total of $7,400.00; Norma ML has not received a refund of the sum paid to IQ.

5

Beginning on or about November 5, 2008, for the fee of $1,550.00, Sandra L. K. and William L.K. paid to and became contractually liable to pay to IQ on a monthly basis a preauthorized fee of $1,550.00 per month for business and mortgage consultations and assisting with the "short sale" of a certain property located at property located in Brentwood, California. The agreement, which provided in part:

"(Sandra L.K. and William L.K.) understand(s) that the 'short sale' approval is subject to lender approval. (Sandra L.K. and William L.K.) understand that this is not a promise or guarantee to short sale my property. (Sandra L.K. and William L.K.) understand that upon stopping of my mortgage payments to my existing bank, I will be at risk of foreclosure". The aforementioned payments were to continue "as long as (Sandra L.K. and William L.K.) own(s) the property . . . and not just duration of the 'short sale' proceedings."(*sic*)

Thereafter, Sandra L.K. and William L.K. canceled the agreement after paying IQ a total of $3,100.00; Sandra L.K. and William L.K. have not received a refund of the sum paid to IQ.

CONCLUSIONS OF LAW

Based on the findings of fact contained in paragraphs 1 through 4, above:

1. IQ, acting by and/or through one or more agents, associates, affiliates, and/or co-conspirators, including, but not limited to MIRZAEI, and/or HENDRYX, sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property, and charged, demanded or collected advance fees for the services to be provided, which acts require a real estate broker license under Sections 10131(a) (real estate license required for enumerated acts) and 10131.2 (real estate broker license required to charge or collect an advance fee) of the Code.

2. IQ, acting by and/or through one or more agents, associates, affiliates, and/or co-conspirators, including, but not limited to MIRZAEI, and/or HENDRYX used a form of advance fee agreement which had not been provided to the Department for its prior review and consideration, in violation of Section 10085 of the Code (prior submission of advance fee materials required) and Section 2970 (details for prior submission of advance fee materials) of the Regulations.

DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, IQ, MIRZAEI and HENDRYX, whether doing business under your own name, or any other name or fictitious name, are hereby ordered to immediately desist and refrain from charging, demanding,

or collecting advance fees, as that term in defined in Section 10026 of the Code, for any of the services you offer to others, in any form, unless and until you demonstrate and provide evidence satisfactory to the Commissioner that you are properly licensed by the Department as a real estate broker, and that you have:

(1) An advance fee agreement which has been submitted to the Department and which is in compliance with Sections 2970 and 2972 of the Regulations;

(2) Placed all previously collected advance fees into a trust account for that purpose and are in compliance with Section 10146 of the Code; and

(3) Provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations.

(4) Within five (5) business days of service of this Desist and Refrain Order you are hereby ordered to refund to Norma ML the total sum of $7,400.00 you wrongfully and illegally collected from Norma ML, collected by or on behalf of you as your fee for the aforementioned business and mortgage consultations and "short sale" services, and provide proof to the Department of your compliance with this refund order.

(5) Within five (5) business day of service of this Desist and Refrain Order you are hereby ordered to refund to Sandra L. K and William L.K., the total sum of $3,100.00 you wrongfully and illegally collected from Sandra L. K and William L.K., collected by or on behalf of you as your fee for the aforementioned business and mortgage consultations and "short sale" services and provide proof to the Department of your compliance with this refund order.

DATED: 8/11/2010

JEFF DAVI
Real Estate Commissioner

By _____

Notice:

Business and Professions Code Section 10139 provides that "Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars ($20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars ($60,000)."

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