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FILED

SEP 17 2009

DEPARTMENT OF REAL ESTATE
BY: [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of ROBERT ESCALERA PEREZ, doing business as Excel Mortgage, Globe Financial Unlimited, R & A Associates and R & A Home Sales, Respondent.	No. H-35531 LA

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 August 4, 2009 and the findings of fact set forth herein are based on one or more of the following: (1) Respondent ROBERT ESCALERA PEREZ's express admissions; (2) affidavits; and (3) Department Audit Report LA 080077, LA 080078 and LA 080094; and (4) other evidence.

FACTUAL FINDINGS

1.

On December 9, 2008, Robin Trujillo made the Accusation and on January 30, 2009, the First Supplemental Accusation (Accusation) in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed by certified mail, to Respondents' last known mailing addresses on file with the Department on December 9, 2008 by certified mail and on January 30, 2009, by certified mail.

2.

On August 4, 2009, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent ROBERT ESCALERA PEREZ default was entered herein.

3.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

LICENSE HISTORY

4.

At all times mentioned, ROBERT ESCALERA PEREZ ("PEREZ") was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On or about April 17, 1990 PEREZ was originally licensed by the Department as a real estate broker.

LICENSED ACTIVITIES AND BROKERAGE

5.

At all times mentioned, in City of Garden Groove, County of Orange, PEREZ acted as a real estate broker and conducted licensed activities within the meaning of:

A. Code Section 10131(a). PEREZ dba R & A Sales and R & A Associates, engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker, including the solicitation for listings of, and the negotiation of the sale of residential real property as the agent of others.

B. Code Section 10131(d). PEREZ dba Excel Mortgage and Globe Financial Unlimited, engaged in activity that included soliciting lenders and borrowers and negotiating the terms of loans secured by real property between borrowers and third party lenders for or in expectation of compensation and for fees often collected in advance as well as at the conclusion of transactions; and

C. Conducted broker controlled escrows through his in house escrow operation, R & A Associates Escrow, under the exemption set forth in California Financial Coded Section 17006 (a) (4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

AUDIT EXAMINATION

6.

On November 21, 2008, the Department completed an audit examination of the books and records of PEREZ pertaining to the residential resale, mortgage loan and broker escrow activities described in Finding 5 that require a real estate license. The audit examination covered a period of time beginning on June 1, 2005 to August 31, 2008 The audit examination revealed violations of the Code and the Regulations as set forth in the following Findings, and more fully discussed in Audit Report LA 080077 and LA 080078 and LA 080094 the exhibits and work papers attached to said audit report.

TRUST ACCOUNT

7.

At all times mentioned, in connection with the activities described in Finding 6, PEREZ accepted or

received funds in trust ("trust funds") from or on behalf of buyers, sellers, borrowers, lenders and escrow holders. Thereafter PEREZ made disposition of such funds.

VIOLATIONS OF THE REAL ESTATE LAW

8.

With respect to licensed activities referred to in Findings 5 and 7 above, and during the audit examination including the exhibits and work papers referred to in Finding 6 it is found that PEREZ:

a. Permitted, allowed or caused the disbursement of trust funds from the escrow trust account where the disbursement of funds reduced the total of aggregate funds in escrow checking account, to an amount which, on February 28, 2006, was $182,307.26 less than the existing aggregate trust fund liability of PEREZ to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951

b. Permitted, allowed or caused the disbursement of trust funds from the escrow trust account where the disbursement of funds reduced the total of aggregate funds in escrow checking account , to an amount which, on February 28, 2008, was $99,962.41, less than the existing aggregate trust fund liability of PEREZ to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1, 2950(d), 2950 (g) and 2951

c. On August 2, 2005, PEREZ, acting as escrow holder for his escrow operation at R&A Associates, converted escrowed sale proceeds for Seller Rosalva Hernandez ("Hernandez") from the sale of her property located at 1518 w. 7th St., Santa Ana, in violation of Code Sections 10145, 10176(a), 10176(i) and 10177(g) and Regulations 2950(g) and 2951. Hernandez did not receive the remaining balance of her sales proceeds, $65,479.15, from PEREZ, until one year later in August 2006. Without authorization from Hernandez, PEREZ diverted a portion of Hernandez' sale proceeds for escrow number 70067-AR in the amount of $65,479.15, for his own use, to wit, PEREZ purchased a property in the state of Missouri. One year

later, in August 2006, PEREZ, refinanced his residence and used the sale proceeds there from to restore the purloined funds to Hernandez.

d. Permitted Alicia Perez, an unlicensed and unbonded person to be an authorized signatory on the escrow checking account without proper fidelity bond coverage, in violation of Code Section 10145 and Regulations 2834, 2950(d) and 2951.

e. PEREZ withdrew escrow trust funds from the escrow trust account, without the prior written consent of every principal or party paying the monies into the respective escrow trust account, in violation of Code Section 10145 and Regulations 2950(g) and 2951. PEREZ made unauthorized disbursements by withdrawing escrow trust funds without written authorization from the following parties to PEREZ' broker controlled escrow:

Escrow Beneficiary	Amount Disbursed
Carolina Gomez	($4,221.87)
Leticia Padilla	($42,275.87)
Rosaura Reyes	($35,301.43)
PEREZ	(56,921.98)
Miscellaneous	(34,208.07)
Total	($148,079.22)

f. PEREZ converted escrow trust funds from PEREZ' broker-controlled escrow in the account between June 18, 2005 and February 25, 2006, for his own use, in violation of Code Section 10176(i).

g. Misrepresented to sellers that PEREZ held earnest money deposits for the buyers at the following real property locations: 1398 Kirkwood Dr., Corona; 553 Fairbanks St., Corona, 9636 Noble Ave., Los Angeles; 3011

Killybrook Lane, Costa Mesa; 670 W. Wilson St., Costa Mesa; 2417 W. Flora St., Santa Ana; and 2114 Salta St., Santa Ana, in violation of Code Section 10176(a).

h. Pursuant to the stipulation and Order for Compliance dated July 31, 2008, PEREZ failed to retain all records of his activity during the audit period requiring a real estate broker license to said Stipulation, in violation of Code Section 10148.

NEGLIGENCE

9.

The overall conduct of Respondent PEREZ constitutes negligence. This conduct and violation are cause for the suspension or revocation of PEREZ' real estate license pursuant to Code Section 10177(g).

LACK OF SUPERVISION AND COMPLIANCE

10.

The overall conduct of PEREZ constitutes a failure to exercise supervision and control over the licensed activities of his brokerage. Nor did PEREZ maintain a system in place for regularly monitoring his compliance with the Real Estate Law.

DETERMINATION OF ISSUES

1.

The conduct of Respondent PEREZ, as described in Finding 8, above is in violation of Code Sections 10145 and 10148, and Title 10, Chapter 6, California Code of Regulations 2832.1, 2834, 2950(d), 2950(g) and 2951, and is cause for disciplinary action pursuant to Code Sections 10176(a), 10176(e), 10176(g), 10176(i), 10177(d) and 10177(g).

2.

The conduct of Respondent PEREZ, as described in Finding 9, and is cause for disciplinary action pursuant to Code Section 10177(g).

3.

The conduct of Respondent PEREZ, as described in Finding 10, herein above is cause for disciplinary action pursuant to Code Sections 10177(d), 10177(g) and 10177(h).

4.

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

ORDER

The real estate license and license rights of Respondent ROBERT ESCALERA PEREZ, under the provisions of Part I of Division 4 of the Business and Professions Code are hereby revoked.

This Decision shall become effective at 12 o'clock noon on October 7, 2009.

DATED: 9-15, 2009

JEFF DAVI
Real Estate Commissioner

Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

(213) 576-6982

FILED

AUG - 4 2009

DEPARTMENT OF REAL ESTATE
BY: [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of ROBERT ESCALERA PEREZ, doing business as Excel Mortgage, Globe Financial Unlimited, R & A Associates and R & A Home Sales, Respondent.	No. H-35531 LA

DEFAULT ORDER

Respondent ROBERT ESCALERA PEREZ, 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 August 4, 2009

JEFF DAVI
Real Estate Commissioner

[signature]

By: M. DOLORES WEEKS
Regional Manager

Sacto

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

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DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of ROBERT ESCALERA PEREZ, doing business as Excel Mortgage, Globe Financial Unlimited, R & A Associates and R & A Home Sales, Respondent.	No. H-35531 LA FIRST SUPPLEMENTAL ACCUSATION

The Accusation filed on December 9, 2008, is supplemented to add "produce or" to Paragraph 6(r):

"Pursuant to the Stipulation and Order for Compliance dated July 31, 2008, PEREZ failed to produce or retain all records of his activity during the audit period requiring a real estate broker license pursuant to said Stipulation, as required by Code Section 10148."

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Dated at Los Angeles, California

this 27 day of January 2009.

R. Trujillo

Deputy Real Estate Commissioner

cc: Robert Escalera Perez
Robin Trujillo
Sacto
Audits - Lisa Kwong

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
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-or- (213) 576-6982 (office)

FILED

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DEPARTMENT OF REAL ESTATE
BY: Hgnesty

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of ROBERT ESCALERA PEREZ, doing business as Excel Mortgage, Globe Financial Unlimited, R & A Associates and R & A Home Sales, Respondent.	No. H-35531 LA A C C U S A T I O N

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity, for cause of Accusation against ROBERT ESCALERA PEREZ dba Excel Mortgage, Globe Financial Unlimited, R & A Associates and R & A Home Sales, is informed and alleges as follows:

1.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

///

LICENSE HISTORY

2.

At all times mentioned, ROBERT ESCALERA PEREZ ("PEREZ"), was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On April 17, 1990, PEREZ was originally licensed as a real estate broker.

LICENSED ACTIVITIES AND BROKERAGE

3.

At all times mentioned, in the City of Garden Grove, County of Orange, PEREZ acted as real estate broker and conducted licensed activities within the meaning of:

A. Code Section 10131(a). PEREZ dba R & A Sales and R & A Associates, engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker, including the solicitation for listings of and the negotiation of the sale of residential real property as the agent of others.

B. Code Section 10131(d). PEREZ dba Excel Mortgage and Globe Financial Unlimited, engaged in activities with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance; and

///

C. Conducted broker-controlled escrows through her in-house escrow operation, R & A Associates Escrow, under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

AUDIT EXAMINATION

4.

On November 21, 2008, the Department completed an audit examination of the books and records of PEREZ, pertaining to the residential resale, mortgage and loan and broker-controlled escrow activities described in Paragraph 3, that require a real estate license. The audit examination covered a period of time beginning on June 1, 2005 to August 31, 2008. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Report LA 080077, LA 080078 and LA 070094 and the exhibits and work papers attached to said audit report.

5.

At all times mentioned, in connection with the activities described in Paragraph 4, PEREZ accepted or received funds in trust ("trust funds") from or on behalf of buyers, sellers, borrowers, lenders and escrow holders. Thereafter PEREZ made disposition of such funds. From time to time herein

mentioned during the audit period, said trust funds were deposited and/or maintained by PEREZ in the bank account as follows:

"R & A Associates Escrow
Account No. 1254714"
Orange County Credit Union
Anaheim, California (escrow checking account)

"R & A Associates Escrow
Account No. 1254714"
Orange County Credit Union
Anaheim, California (savings account)

VIOLATONS OF THE REAL ESTATE LAW

6.

With respect to the licensed activities referred to in Paragraphs 3 and 5, and the audit examination including the exhibits and work papers referred to in Paragraph 4, it is alleged that PEREZ:

(a) Permitted, allowed or caused the disbursement of trust funds from the escrow trust account where the disbursement of funds reduced the total of aggregate funds in escrow checking account, to an amount which, on February 28, 2006, was $182,307.26, less than the existing aggregate trust fund liability of PEREZ to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951.

(b) Permitted, allowed or caused the disbursement of trust funds from the escrow trust account where the disbursement of funds reduced the total of aggregate funds in escrow checking account, to an amount which, on February 28, 2008, was $99,962.41, less than the existing aggregate trust fund liability of PEREZ to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951.

(c) On August 2, 2005, PEREZ, acting as escrow holder for his escrow operation at R & A Associates, converted escrowed sale proceeds for seller Rosalva Hernandez ("Hernandez") from the sale of her property located at 1518 W. 7th St, Santa Ana, in violation of Code Sections 10145, 10176(a), 10176(i) and 10177(g) and Regulations 2950(g) and 2951. Hernandez did not receive the remaining balance of her sales proceeds, $65,479.15, from PEREZ, until one year later in August 2006. Without authorization from Hernandez, PEREZ diverted a portion of Hernandez' sales proceeds for escrow number 70067-AR in the amount of $65,479.15, for his own use, to wit, PEREZ purchased a property in the state of Missouri. One year later, in August 2006, PEREZ, refinanced his residence and used the sale proceeds therefrom, to restore the purloined funds to Hernandez,

(d)(1) Failed to maintain a control record in the form of a columnar record in chronological order of all trust funds

received, deposited and disbursed by the broker escrow, as required by Code Section 10145 and Regulation 2831, 2950(d) and 2951.

(d)(2) Failed to maintain a control record in the form of a columnar record in chronological order of all trust funds received, deposited and disbursed by the mortgage loan activities including credit and appraisal fees, as required by Code Section 10145 and Regulation 2831; and

(d)(3) Failed to maintain an accurate and complete control record for Trust Funds Received - Not Placed in Broker's Trust Account in the form of a columnar record in chronological order of all trust funds received, deposited and disbursed by the real estate sales activities, including earnest money deposits, as required by Code Section 10145 and Regulation 2831.

(e)(1) Failed to maintain an accurate and complete separate record in the form of a columnar record in chronological order of all trust funds received, deposited and disbursed by the broker escrow, as required by Code Section 10145 and Regulations 2831.1, 2950(d) and 2951; and

(e)(2) Failed to maintain a separate record in the form of a columnar record in chronological order of all trust funds received, deposited and disbursed by the mortgage loan activities including credit report fees collected from the lender at the close of escrow, as required by Code Section 10145 and Regulation 2831.1.

(f) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by the escrow trust account, as required by Code Section 10145 and Regulations 2831.2, 2950(d) and 2951.

(g)(1) The escrow checking account was not in the name of the broker as trustee at a bank or other financial institution, nor designated as a trust account, in violation of Code Section 10145 of the Code and Regulations 2832(a), 2950(d) and 2951; and

(g)(2) Failed to place trust funds, including earnest money deposits, accepted on behalf of another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund account in the name of the trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson, as required by Code Section 10145 and Regulation 2832(d).

(h) Permitted Alicia Perez, an unlicensed and unbonded person to be authorized signatories on the escrow checking account without proper fidelity bond coverage, in violation of Code Section 10145 and Regulations 2834, 2950(d) and 2951.

(i) Withdrew escrow trust funds from the escrow checking account, without the prior written consent of every principal or party paying the monies into the respective escrow

account, in violation of Code Section 10145 and Regulations 2950(g) and 2951. PEREZ made unauthorized disbursements by withdrawing escrow trust funds without written authorization from the following parties to PEREZ' broker-controlled escrow:

Escrow beneficiary	Amount Disbursed
Carolina Gomez	($4,221.87)
Leticia Padilla	($42,275.87)
Rosaura Reyes	($35,301.43)
PEREZ	(56,921.98)
Miscellaneous Disbursements	(34,208.07)
	($148,079.22)

(j) Converted escrow trust funds from PEREZ' broker-controlled escrow in the amount of by $32,921.98, by withdrawing cash from the escrow checking account between June 18, 2995 and February 26, 2006, for his own use, in violation of Code Section 10176(i).

(k) Failed to disclose in writing to all parties of PEREZ' financial interest and ownership of his escrow operation at "R & A Associates", as required by Code Section 10176(g) and Regulation 2950(h).

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(l)(1) Received undisclosed compensation by means accrued interest in the escrow savings account with the Orange County Credit Union, in violation of Code Sections 10176(a) and 10176(g).

(l)(2) Failed to disclose that PEREZ charged credit report fees in excess of the amount billed to borrowers by the credit reporting company including borrowers Hernandez, Tavares and Orjuela. This failure to disclose constitutes the taking of a secret profit by means of compensation undisclosed to the aforesaid borrowers, in violation of Code Section 10176(g).

(m) Perez failed to display his broker license number on the Mortgage Loan Disclosure Statements. Nor did PEREZ disclose the license number of the real estate agent negotiating the loan, in violation of Code Section 10236.4(b).

(n)(1) Failed to retain a true and correct copy of a Department of Real Estate approved Mortgage Loan Disclosure Statement signed by the broker for borrowers Islas and Amaya, in violation of Code Section 10240 and Regulation 2840; and

(n)(2) Failed to disclose yield spread premiums from lenders on the approved Mortgage Loan Disclosure Statement for the borrowers Hernandez, Arellano, Tavares and Orjuela, in violation of Code Section 10240 and Regulation 2840.

(o) Commingled trust funds and personal funds and made by depositing credit report fees collected at close of escrow into PEREZ' general account, in violation of Code Section

10176(e)and Regulation 2832.

(p) PEREZ failed to notify the Department of the termination of his Garden Grove branch office located at 12531 Harbor Blvd., #J, in violation of Code Section 10162 and Regulation 2715.

(q) Misrepresented to sellers that PEREZ held earnest money deposits for the buyers at the following real property locations: 1398 Kirkwood Dr, Corona; 553 Fairbanks St., Corona, 9636 Noble Ave., Los Angeles; 3011 Killybrook Lane, Costa; 670 W. Wilson St., Costa Mesa, 2417 W. Flora St., Santa Ana and 2114 Salta St., Santa Ana, in violation of Code Section 10176(a).

(r) Pursuant to the Stipulation and Order for Compliance dated July 31, 2008, PEREZ failed to retain all records of his activity during the audit period requiring a real estate broker license pursuant to said Stipulation, as required by Code Section 10148.

DISCIPLINARY STATUTES AND REGULATIONS

7.

The conduct of Respondent PEREZ, described in Paragraph 6, violated the Code and the Regulations as set forth:

PARAGRAPH	PROVISIONS VIOLATED
6(a)	Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951

6(b)	Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951
6(c)	Code Sections 10145, 10176(a), 10176(i) and 10177(g) and Regulations 2950(g) and 2951
6(d)	Code Section 10145 and Regulation 2831, 2950(d) and 2951.
6(e)	Code Section 10145 and Regulations 2831.1, 2950(d) and 2951
6(f)	Code Section 10145 and Regulations 2831.2, 2950(d) and 2951
6(g)	Code Section 10145 of the Code and Regulations 2832, 2950(d) and 2951
6(h)	Code Section 10145 and Regulations 2834, 2950(d) and 2951

6(i)	Code Section 10145 and Regulations 2950(g) and 2951
6(j)	Code Section 10176(i)
6(k)	Code Section 10176(g) and Regulation 2950(h)
6(l)	Code Sections 10176(a) and 10176(g)
6(m)	Code Section 10234.4(b)
6(n)	Code Section 10240 and Regulation 2840
6(o)	Code Section 10176(e) and Regulation 2832
6(p)	Code Section 10162 and Regulation 2715
6(q)	Code Section 10176(a)
6(r)	Code Section 10148

Each of the foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of PEREZ under the provisions of Code Sections of:

10176(a) for misrepresentation

10176(e) for commingling

10176(g) for secret profit via undisclosed compensation

10176(i) for fraud and dishonest dealing

10177(d) for willful violation of the Real Estate Law

10177(g) for negligence and

10177(h) for lack of supervision of his brokerage.

NEGLIGENCE

8.

The overall conduct of PEREZ constitutes negligence or incompetence and is cause for discipline of the real estate license and license rights of PEREZ pursuant to Code Section 10177(g).

9.

Respondent PEREZ intentionally engaged in the conduct above set forth in Paragraphs 7 and 8. In the alternative, Respondent PEREZ engaged in deceit by way of negligent misrepresentation, in violation of and Code Sections 10176(i) and 10177(g).

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LACK OF SUPERVISION AND COMPLIANCE

10.

The overall conduct of PEREZ constitutes a failure to exercise supervision and control over the licensed activities of his brokerage. Nor did PEREZ maintain a system in place for regularly monitoring his compliance with the Real Estate Law especially in regard to establishing policies to review trust fund handling and record keeping for his client's trust funds, in violation of Code Sections 10177(d), 10177(h) and/or 10177(g).

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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 the license and license rights of Respondent ROBERT ESCALERA PEREZ, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 9 day of December 2008.

Robin Trujillo
Deputy Real Estate Commissioner

cc: Robert Escalera Perez
Robin Trujillo
Sacto
Audits - Lisa Kwong