FILED

APR - 9 2013

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of PLATINUM ACCEPTANCE CORP.; and MIR NOORBAKHSH, individually, and as designated officer of Platinum Acceptance Corp.; and ROBERT DOMENIC LONARDO, Respondents.	)	DRE No. H-36482 LA OAH No. L-2010110335

DECISION

The Proposed Decision dated February 1, 2013, 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.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on April 29, 2013.

IT IS SO ORDERED 3/12/2013.

Real Estate Commissioner

WAYNE S. BELL

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of: PLATINUM ACCEPTANCE CORP.; and MIR NOORBAKHSH, individually, and as designated officer of Platinum Acceptance Corp.; and ROBERT DOMENIC LONARDO, Respondents.	Agency Case No. H-36482 LA OAH Case No. 2010110335

REVISED PROPOSED DECISION AFTER REMAND

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on March 27, 2012, in Los Angeles, California.

Elliott MacLennan, Staff Counsel, represented Deputy Real Estate Commissioner Robin Trujillo (Complainant).

Mir Noorbakhsh (Respondent Noorbakhsh) represented himself individually and as designated officer of Platinum Acceptance Corp. (Respondent Platinum). Respondent Noorbakhsh also represented Respondent Platinum.

Robert Lonardo (Respondent Lonardo) was not present. No one representing Respondent Lonardo appeared.

The parties submitted the matter for decision on March 27, 2012. The ALJ issued the Proposed Decision on April 23, 2012. On June 20, 2012, the Real Estate Commissioner filed a Notice of Rejection and Order Remanding Case to Administrative Law Judge to take Additional Evidence. The Order of Remand stated the purpose of the remand was, "to take additional evidence and argument in reference to Factual Finding 18 regarding the recoverability and appropriateness of audit costs." The remanded hearing was originally set to be heard on August 31, 2012, but was continued to January 10, 2013, after Respondent Noorbakhsh filed a request for a continuance.

The ALJ heard the remanded matter on January 10, 2013. Mr. MacLennan represented Complainant. Respondent Noorbakhsh appeared in the same capacity as on March 27, 2012. Respondent Lonardo again failed to appear.

The parties submitted the remanded matter for decision on January 10, 2013.

STATEMENT OF THE CASE

Complainant contends that revocation of Respondents' licenses is warranted because an audit examination by the Department of Real Estate (Department) in 2009 revealed that Respondents violated a number of provisions of the Business and Professions Code and the Department's regulations. Complainant further contends Respondent Noorbakhsh failed to properly supervise the activities of Respondents Platinum and Lonardo.

Respondents Noorbakhsh and Platinum deny knowingly violating the law and argue that they should retain their real estate licenses.

FACTUAL FINDINGS

1. On March 1, 2010, Complainant, acting in her official capacity, filed the Accusation. Respondent Noorbakhsh filed a Notice of Defense on March 9, 2010. Respondents Noorbakhsh and Platinum filed an amended Notice of Defense on March 16, 2010. Respondent Lonardo filed a Notice of Defense on August 3, 2010. Respondent Lonardo indicated on his Notice of Defense, "I can only attend the hearing by phone I now live in RI [Rhode Island]." Respondent Lonardo made no request and took no action to appear by telephone.

2. Complainant did not argue that Respondent Lonardo's notice of defense was untimely, therefore it was deemed to have been filed timely.

3. The Department issued a real estate salesperson license to Respondent Noorbakhsh on December 9, 2002, and a real estate broker license on March 15, 2006. The real estate broker license expires on December 22, 2014, unless renewed.

4. The Department issued a corporate real estate broker license to Respondent Platinum on July 18, 2006. The license expired on July 17, 2010; however, the Department retains jurisdiction over Respondent Platinum's corporate real estate broker license, pursuant to Business and Professions Code section 10103.

5. The Department issued a conditional real estate salesperson license to Respondent Lonardo on November 16, 2005. The conditional license expired on May 16, 2007; it was suspended indefinitely, pursuant to Business and Professions Code section 10153.4, subdivision (c), on May 17, 2007, and it expired on November 15, 2009. The Department retains jurisdiction over Respondent Lonardo's license, pursuant to Business and Professions Code section 10103.

6. Respondents performed loan modification services. For compensation, or in expectation of compensation and for fees, often collected in advance, Respondents contacted lenders' loss mitigation departments on behalf of economically distressed homeowner-borrowers seeking modification of the terms of their home loans, including, repayment plans, forbearance, deed-in-lieu of foreclosure, partial claims, and reduction in principal or interest.

7. In approximately August 2009, the Department received consumer complaints against Respondents. Additionally, the Department found that, pursuant to its audit of another licensee, Diamond Funding Inc., Diamond Funding Inc. had transferred more than $180,000 of trust funds into a Respondent Platinum bank account. In its audit of Diamond Funding Inc., the Department's auditor was unable to ascertain what had happened to those funds. Additionally, when questioned in the Diamond Funding Inc. audit process, Respondent Noorbakhsh claimed to be unaware of the funds. Consequently, the Department conducted an audit of Respondents, covering Respondents' activities from September 1, 2006, through August 31, 2009.

8. The audit uncovered the misconduct set forth in Factual Findings 9 through 14.

9(a). Respondent Lonardo made unauthorized withdrawals from a Wachovia Bank account (Wachovia account), bearing the account name of "Platinum Acceptance Corp." The signatories on the account were Respondents Noorbakhsh and Lonardo. The account was used to handle receipts and disbursements for advance fees on loan modification transactions. Respondent Lonardo made unauthorized withdrawals in June and July 2009 that totaled $205,679.39. Respondent Noorbakhsh permitted Respondent Lonardo, with an expired Department-issued license, to be a signatory on this bank account, and permitted Respondent Lonardo to make the withdrawals. Respondent Lonardo's unauthorized withdrawals caused the total aggregate funds in the account to be less than the existing aggregate trust fund liability to every principal who was an owner of those funds, without first obtaining the prior written consent of the fund owners.

9(b). Respondents' actions and omissions set forth in Factual Finding 9(a) are violations of Business and Professions Code sections 10145, and 10176, subdivision (i), California Code of Regulations, title 10, sections 2832.1, and 2834, and as to Respondent Lonardo alone, a violation of Business and Professions Code section 10130.

10(a). Respondents failed to establish and maintain a trust account at a bank or other recognized financial institution in the name of the broker for deposit of advance fees collected by Respondent Platinum. Neither of the two bank accounts Respondents used (the Wachovia account or a Bank of America account, bearing the account name of "Platinum Acceptance Corp." and with Respondent Noorbakhsh as signatory) was designated as a trust account during the audit period. Respondent Noorbakhsh changed the Bank of America account to a trust account in 2009, but after the audit period.

10(b). Respondents' actions and omissions set forth in Factual Finding 10(a) are violations of Business and Professions Code section 10146.

11(a). Respondents failed to maintain a control record in the form of a columnar record in chronological order of all trust funds, including advance fees collected in connection with loan modification transactions.

11(b). Respondents' omission set forth in Factual Finding 11(a) is a violation of Business and Professions Code section 10145, and California Code of Regulations, title 10, section 2834.

12(a). Respondents failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all of the advance fees they collected.

12(b). Respondents' omission set forth in Factual Finding 12(a) is a violation of Business and Professions Code section 10145, and California Code of Regulations, title 10, section 2831.1.

13(a). Respondents failed to perform a monthly reconciliation of the balance of all separate beneficiary or transactions records with the record of all trust funds received and disbursed from the general account for loan modification services.

13(b). Respondents' omission set forth in Factual Finding 13(a) is a violation of Business and Professions Code section 10145, and California Code of Regulations, title 10, section 2831.2.

14(a). Respondents commingled trust funds and personal funds by depositing trust funds in the form of advance fees collected for loan modifications into the Bank of America account during 2008 and part of 2009.

14(b). Respondents' actions and omissions set forth in Factual Finding 14(a) were violations of Business and Professions Code section 10145, and 10176, subdivision (e), and California Code of Regulations, title 10, section 2832.

15. Respondent Noorbakhsh asserted at hearing that he was unaware of all of Respondent Lonardo's actions. He believed Respondent Lonardo acted alone in his misconduct. Respondent Noorbakhsh further asserted that he attempted to distance himself from Respondent Lonardo and Respondent Lonardo's misconduct once he was aware of it. Respondent Noorbakhsh asserted that he took action to complete any services offered to California homeowners. There was no persuasive evidence to corroborate Respondent Noorbakhsh's assertions.

16. Respondent Noorbakhsh offered a copy of a contract between himself and Respondent Lonardo wherein they entered into an indemnification agreement on June 8, 2009. Pursuant to the agreement, Respondents Noorbakhsh and Lonardo agreed that they

were engaging in "business" together and that, as a part of that unnamed business, Respondent Lonardo intended to deposit "certain funds" into a bank account to which both parties would have access. The agreement left the particular business and funds undefined and noted that the source of these funds was unknown to Respondent Noorbakhsh, and that Respondent Lonardo intended to provide indemnity to Respondent Noorbakhsh for any claims made as to these funds. This agreement established that Respondent Noorbakhsh attempted to shield himself from Respondent Lonardo's wrongdoing and, given the contract language, Respondent Noorbakhsh understood that Respondent Lonardo was acting improperly in his business and that the funds used and accessed by Respondent Lonardo were questionable. Considering this indemnification agreement and Factual Findings 9 through 14, Respondent Noorbakhsh did not properly supervise or exercise reasonable control of Respondents Platinum's and Lonardo's actions with regard to Respondents' licensed activities, as required by Business and Professions Code section 10159.2, and California Code of Regulations, title 10, section 2725.

17. Respondent Noorbakhsh's arguments and assertions at hearing were unsupported by the evidence. He failed to present any persuasive evidence to dispute the audit findings. Additionally, Respondent Noorbakhsh provided no evidence of his honesty, integrity, or character. It is noted that the Department's auditor believed Respondent Lonardo was the principal bad actor with regard to the conduct uncovered by audit findings.

18. At the remanded hearing, Complainant offered a Statement of Costs by Eric Goff, Supervising Auditor I. In the Statement of Costs, Goff declared under penalty of perjury that the Real Estate Commissioner had designated him to certify audit costs and certified the following costs: $6,127.50 for the performance of the audit; $99 in travel costs (180 miles at $.055 per mile); and $231 for the supervisory review of the audit. The audit costs total $6,457.50. The audit costs are reasonable. Respondent Noorbakhsh provided no evidence that these costs would pose a financial hardship on him. Respondent Noorbakhsh argued that he should not be liable for the audit costs because he did not request the audit and because he did not know the audit costs would be imposed against him.[1]

LEGAL CONCLUSIONS

1. The Department bore the burden of proof by clear and convincing evidence.

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[1] In the Proposed Decision issued on April 23, 2012, Factual Finding 18 read as follows: "At hearing, Complainant requested an order recovering the Department's audit costs from Respondents. Complainant's counsel represented, in argument, that the audit costs were $5,969.50. Complainant did not plead this request within the Accusation and there was no evidence to support the costs. Therefore, the Department's audit costs cannot be awarded to Complainant in this matter."

2. Business and Professions Code section 10176 states in part:

> The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may . . . permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:
>
> [¶] . . . [¶]
>
> (e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.
>
> [¶] . . . [¶]
>
> (i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

3. Respondent Lonardo's unauthorized withdrawals, totaling $205,679.39, and Respondents Noorbakhsh and Platinum's allowance of these actions constituted dishonest dealings. These actions are also substantially related to a Department licensee's qualifications, functions, and duties. (See Cal. Code Regs., tit. 10, § 2910, subds. (a)(1), (a)(2), (a)(4), (a)(6), and (a)(8).)

4. Cause exists to revoke or suspend Respondents' real estate licenses, pursuant to Business and Professions Code section 10176, subdivision (i), for dishonest dealing, as set forth in Factual Findings 1-9, 15-17, and Legal Conclusions 1-3.

5. Cause exists to revoke or suspend Respondents' real estate licenses, pursuant to Business and Professions Code section 10176, subdivision (e), for the commingling of funds received and held by Respondents, as set forth in Factual Findings 1-8, 14-17, and Legal Conclusions 1 and 2.

6. Business and Professions Code section 10130, states in part:

> It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department.
>
> The commissioner may prefer a complaint for violation of this section before any court of competent jurisdiction, and the commissioner and his

counsel, deputies or assistants may assist in presenting the law or facts at the trial.

7. Cause exists to revoke or suspend Respondent Lonardo's real estate salesperson license, pursuant to Business and Professions Code section 10130, for acting as a real estate licensee with an expired license, as set forth in Factual Findings 1-9, 15-17, and Legal Conclusions 1 and 6.

8. Business and Professions Code section 10177, states in part:

> The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following, or may suspend or revoke the license of a corporation . . . if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:
>
> [¶] . . . [¶]
>
> (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.
>
> [¶] . . . [¶]
>
> (g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.
>
> (h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

9. Cause exists to revoke or suspend Respondents' real estate licenses, pursuant to Business and Professions Code section 10177 subdivision (d), for violating the real estate laws, as set forth in Factual Findings 1-17, and Legal Conclusions 1-8, and 10.

10. Cause exists to revoke or suspend Respondent Noorbakhsh's real estate broker license, pursuant to Business and Professions Code section 10177, subdivision (h), for failing to exercise reasonable supervision and control over the activities of Respondents Platinum and Lonardo, as set forth in Factual Findings 1-17, and Legal Conclusions 1 and 8.

11. There was insufficient evidence (no expert opinion) to establish that Respondents' actions constituted negligence or incompetence.

12. Cause does not exist to revoke or suspend Respondents' real estate licenses, pursuant to Business and Professions Code section 10177, subdivision (g), for demonstrating negligence or incompetence, as set forth in Factual Findings 1-17, and Legal Conclusions 1, 8, and 11.

13. With no persuasive evidence of mitigation or rehabilitation, and no persuasive evidence to dispute the Department's audit findings, Respondents' violations of law and regulation establish that the continued licensure of Respondents would endanger the public. Thus, revocation of Respondents' real estate licenses is necessary for public protection.

14. Business and Professions Code section 10148, subdivision (b) provides that the Real Estate Commissioner shall charge a real estate broker for audit costs if that broker is found to have violated Business and Professions Code section 10145 or any regulation interpreting that provision. Pursuant to Factual Findings 9, 11 through 14, and 18, Respondents' violations of Business and Professions Code section 10145 provide cause to impose $6,457.50 in audit costs against Respondents. Respondents received adequate notice of the subject of the remanded hearing to provide them an opportunity to present evidence to contest the audit costs. Respondents failed to present evidence to support the denial or reduction of those costs. Thus, imposing these costs is appropriate.

ORDER

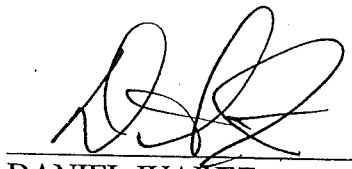
All licenses and licensing rights of Respondent Mir Noorbakhsh under the Real Estate Law are revoked.

All licenses and licensing rights of Respondent Platinum Acceptance Corp. under the Real Estate Law are revoked.

All licenses and licensing rights of Respondent Robert Domenic Lonardo under the Real Estate Law are revoked.

Respondents Platinum Acceptance Corp., Mir Noorbakhsh, and Robert Domenic Lonardo are jointly and severally liable to pay the reasonable audit costs to the Department of Real Estate or other entity, as directed by the Real Estate Commissioner. Pursuant to Section 10148 of the Business and Professions Code, Respondents shall pay $6,457.50 as the reasonable audit costs. Respondents shall pay such costs within 60 days of receiving the notice of billing from the Department of Real Estate.

Dated: February 1, 2013



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

FILED

JUN 20 2012

DEPARTMENT OF REAL ESTATE
BY:

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of PLATINUM ACCEPTANCE CORP.; and MIR NOORBAKHSH, individually and as designated officer of Platinum Acceptance Corp.; and ROBERT DOMENIC LONARDO. Respondents.	No. H-36482 LA L-2010110335

NOTICE OF REJECTION AND ORDER REMANDING CASE TO ADMINISTRATIVE LAW JUDGE TO TAKE ADDITIONAL EVIDENCE

TO: PLATINUM ACCEPTANCE CORP., MIR NOORBAKHSH, and ROBERT DOMENIC LONARDO, Respondents.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 23, 2012, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 23, 2012 is attached hereto for your information.

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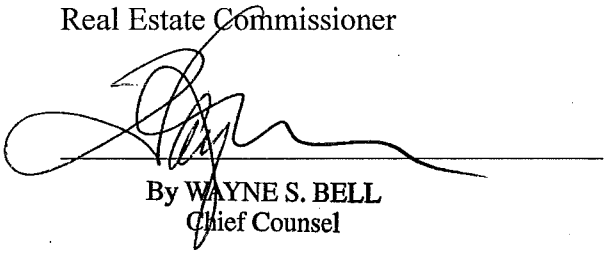
IT IS HEREBY ORDERED, in accordance with Section 11517(c) of the Government Code, that this case be remanded to DANIEL JUAREZ, Administrative Law Judge of the Office of Administrative Hearings, to take additional evidence and argument in reference to Factual Finding 18 regarding the recoverability and appropriateness of audit costs.

DATED: June 13, 2012

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of: PLATINUM ACCEPTANCE CORP.; and MIR NOORBAKHSH, individually, and as designated officer of Platinum Acceptance Corp.; and ROBERT DOMENIC LONARDO, Respondents.	Agency Case No. H-36482 LA OAH Case No. 2010110335

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on March 27, 2012, in Los Angeles, California.

Elliott MacLennan, Staff Counsel, represented Deputy Real Estate Commissioner Robin Trujillo (Complainant).

Mir Noorbakhsh (Respondent Noorbakhsh) represented himself individually and as designated officer of Platinum Acceptance Corp. (Respondent Platinum). Respondent Noorbakhsh also represented Respondent Platinum.

Robert Lonardo (Respondent Lonardo) was not present. No one representing Respondent Lonardo appeared.

The parties submitted the matter for decision on March 27, 2012.

STATEMENT OF THE CASE

Complainant contends that revocation of Respondents' licenses is warranted because an audit examination by the Department of Real Estate (Department) in 2009 revealed that Respondents violated a number of provisions of the Business and Professions Code and the Department's regulations. Complainant further contends Respondent Noorbakhsh failed to properly supervise the activities of Respondents Platinum and Lonardo.

Respondents Noorbakhsh and Platinum deny knowingly violating the law and argue that they should retain their real estate licenses.

FACTUAL FINDINGS

1. On March 1, 2010, Complainant, acting in her official capacity, filed the Accusation. Respondent Noorbakhsh filed a Notice of Defense on March 9, 2010. Respondents Noorbakhsh and Platinum filed an amended Notice of Defense on March 16, 2010. Respondent Lonardo filed a Notice of Defense on August 3, 2010. Respondent Lonardo indicated on his Notice of Defense, "I can only attend the hearing by phone I now live in RI [Rhode Island]." Respondent Lonardo made no request and took no action to appear by telephone.

2. Complainant did not argue that Respondent Lonardo's notice of defense was untimely, therefore it was deemed to have been filed timely.

3. The Department issued a real estate salesperson license to Respondent Noorbakhsh on December 9, 2002, and a real estate broker license on March 15, 2006. The real estate broker license expires on December 22, 2014, unless renewed.

4. The Department issued a corporate real estate broker license to Respondent Platinum on July 18, 2006. The license expired on July 17, 2010; however, the Department retains jurisdiction over Respondent Platinum's corporate real estate broker license, pursuant to Business and Professions Code section 10103.

5. The Department issued a conditional real estate salesperson license to Respondent Lonardo on November 16, 2005. The conditional license expired on May 16, 2007; it was suspended indefinitely, pursuant to Business and Professions Code section 10153.4, subdivision (c), on May 17, 2007, and it expired on November 15, 2009. The Department retains jurisdiction over Respondent Lonardo's license, pursuant to Business and Professions Code section 10103.

6. Respondents performed loan modification services. For compensation, or in expectation of compensation and for fees, often collected in advance, Respondents contacted lenders' loss mitigation departments on behalf of economically distressed homeowner-borrowers seeking modification of the terms of their home loans, including, repayment plans, forbearance, deed-in-lieu of foreclosure, partial claims, and reduction in principal or interest.

7. In approximately August 2009, the Department received consumer complaints against Respondents. Additionally, the Department found that, pursuant to its audit of another licensee, Diamond Funding Inc., Diamond Funding Inc. had transferred more than $180,000 of trust funds into a Respondent Platinum bank account. In its audit of Diamond Funding Inc., the Department's auditor was unable to ascertain what had happened to those funds. Additionally, when questioned in the Diamond Funding Inc. audit process, Respondent Noorbakhsh claimed to be unaware of the funds. Consequently, the Department conducted an audit of Respondents, covering Respondents' activities from September 1, 2006, through August 31, 2009.

8. The audit uncovered the misconduct set forth in Factual Findings 9 through 14.

9(a). Respondent Lonardo made unauthorized withdrawals from a Wachovia Bank account (Wachovia account), bearing the account name of "Platinum Acceptance Corp." The signatories on the account were Respondents Noorbakhsh and Lonardo. The account was used to handle receipts and disbursements for advance fees on loan modification transactions. Respondent Lonardo made unauthorized withdrawals in June and July 2009 that totaled $205,679.39. Respondent Noorbakhsh permitted Respondent Lonardo, with an expired Department-issued license, to be a signatory on this bank account, and permitted Respondent Lonardo to make the withdrawals. Respondent Lonardo's unauthorized withdrawals caused the total aggregate funds in the account to be less than the existing aggregate trust fund liability to every principal who was an owner of those funds, without first obtaining the prior written consent of the fund owners.

9(b). Respondents' actions and omissions set forth in Factual Finding 9(a) are violations of Business and Professions Code sections 10145, and 10176, subdivision (i), California Code of Regulations, title 10, sections 2832.1, and 2834, and as to Respondent Lonardo alone, a violation of Business and Professions Code section 10130.

10(a). Respondents failed to establish and maintain a trust account at a bank or other recognized financial institution in the name of the broker for deposit of advance fees collected by Respondent Platinum. Neither of the two bank accounts Respondents used (the Wachovia account or a Bank of America account, bearing the account name of "Platinum Acceptance Corp." and with Respondent Noorbakhsh as signatory) was designated as a trust account during the audit period. Respondent Noorbakhsh changed the Bank of America account to a trust account in 2009, but after the audit period.

10(b). Respondents' actions and omissions set forth in Factual Finding 10(a) are violations of Business and Professions Code section 10146.

11(a). Respondents failed to maintain a control record in the form of a columnar record in chronological order of all trust funds, including advance fees collected in connection with loan modification transactions.

11(b). Respondents' omission set forth in Factual Finding 11(a) is a violation of Business and Professions Code section 10145, and California Code of Regulations, title 10, section 2834.

12(a). Respondents failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all of the advance fees they collected.

12(b). Respondents' omission set forth in Factual Finding 12(a) is a violation of Business and Professions Code section 10145, and California Code of Regulations, title 10, section 2831.1.

13(a). Respondents failed to perform a monthly reconciliation of the balance of all separate beneficiary or transactions records with the record of all trust funds received and disbursed from the general account for loan modification services.

13(b). Respondents' omission set forth in Factual Finding 13(a) is a violation of Business and Professions Code section 10145, and California Code of Regulations, title 10, section 2831.2.

14(a). Respondents commingled trust funds and personal funds by depositing trust funds in the form of advance fees collected for loan modifications into the Bank of America account during 2008 and part of 2009.

14(b). Respondents' actions and omissions set forth in Factual Finding 14(a) were violations of Business and Professions Code section 10145, and 10176, subdivision (e), and California Code of Regulations, title 10, section 2832.

15. Respondent Noorbakhsh asserted at hearing that he was unaware of all of Respondent Lonardo's actions. He believed Respondent Lonardo acted alone in his misconduct. Respondent Noorbakhsh further asserted that he attempted to distance himself from Respondent Lonardo and Respondent Lonardo's misconduct once he was aware of it. Respondent Noorbakhsh asserted that he took action to complete any services offered to California homeowners. There was no persuasive evidence to corroborate Respondent Noorbakhsh's assertions.

16. Respondent Noorbakhsh offered a copy of a contract between himself and Respondent Lonardo wherein they entered into an indemnification agreement on June 8, 2009. Pursuant to the agreement, Respondents Noorbakhsh and Lonardo agreed that they were engaging in "business" together and that, as a part of that unnamed business, Respondent Lonardo intended to deposit "certain funds" into a bank account to which both parties would have access. The agreement left the particular business and funds undefined and noted that the source of these funds was unknown to Respondent Noorbakhsh, and that Respondent Lonardo intended to provide indemnity to Respondent Noorbakhsh for any claims made as to these funds. This agreement established that Respondent Noorbakhsh attempted to shield himself from Respondent Lonardo's wrongdoing and, given the contract language, Respondent Noorbakhsh understood that Respondent Lonardo was acting improperly in his business and that the funds used and accessed by Respondent Lonardo were questionable. Considering this indemnification agreement and Factual Findings 9 through 14, Respondent Noorbakhsh did not properly supervise or exercise reasonable control of Respondents Platinum's and Lonardo's actions with regard to Respondents' licensed activities, as required by Business and Professions Code section 10159.2, and California Code of Regulations, title 10, section 2725.

17. Respondent Noorbakhsh's arguments and assertions at hearing were unsupported by the evidence. He failed to present any persuasive evidence to dispute the audit findings. Additionally, Respondent Noorbakhsh provided no evidence of his honesty,

integrity, or character. It is noted that the Department's auditor believed Respondent Lonardo was the principal bad actor with regard to the conduct uncovered by audit findings.

18. At hearing, Complainant requested an order recovering the Department's audit costs from Respondents. Complainant's counsel represented, in argument, that the audit costs were $5,969.50. Complainant did not plead this request within the Accusation and there was no evidence to support the costs. Therefore, the Department's audit costs cannot be awarded to Complainant in this matter.

LEGAL CONCLUSIONS

1. The Department bore the burden of proof by clear and convincing evidence.

2. Business and Professions Code section 10176 states in part:

> The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may . . . permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:
>
> [¶] . . . [¶]
>
> (e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.
>
> [¶] . . . [¶]
>
> (i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

3. Respondent Lonardo's unauthorized withdrawals, totaling $205,679.39, and Respondents Noorbakhsh and Platinum's allowance of these actions constituted dishonest dealings. These actions are also substantially related to a Department licensee's qualifications, functions, and duties. (See Cal. Code Regs., tit. 10, § 2910, subds. (a)(1), (a)(2), (a)(4), (a)(6), and (a)(8).)

4. Cause exists to revoke or suspend Respondents' real estate licenses, pursuant to Business and Professions Code section 10176, subdivision (i), for dishonest dealing, as set forth in Factual Findings 1-9, 15-17, and Legal Conclusions 1-3.

5. Cause exists to revoke or suspend Respondents' real estate licenses, pursuant to Business and Professions Code section 10176, subdivision (e), for the commingling of funds received and held by Respondents, as set forth in Factual Findings 1-8, 14-17, and Legal Conclusions 1 and 2.

6. Business and Professions Code section 10130, states in part:

> It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department.
>
> The commissioner may prefer a complaint for violation of this section before any court of competent jurisdiction, and the commissioner and his counsel, deputies or assistants may assist in presenting the law or facts at the trial.

7. Cause exists to revoke or suspend Respondent Lonardo's real estate salesperson license, pursuant to Business and Professions Code section 10130, for acting as a real estate licensee with an expired license, as set forth in Factual Findings 1-9, 15-17, and Legal Conclusions 1 and 6.

8. Business and Professions Code section 10177, states in part:

> The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following, or may suspend or revoke the license of a corporation . . . if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:
>
> [¶] . . . [¶]
>
> (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.
>
> [¶] . . . [¶]
>
> (g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.
>
> (h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a

corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

9. Cause exists to revoke or suspend Respondents' real estate licenses, pursuant to Business and Professions Code section 10177 subdivision (d), for violating the real estate laws, as set forth in Factual Findings 1-17, and Legal Conclusions 1-8, and 10.

10. Cause exists to revoke or suspend Respondent Noorbakhsh's real estate broker license, pursuant to Business and Professions Code section 10177, subdivision (h), for failing to exercise reasonable supervision and control over the activities of Respondents Platinum and Lonardo, as set forth in Factual Findings 1-17, and Legal Conclusions 1 and 8.

11. There was insufficient evidence (no expert opinion) to establish that Respondents' actions constituted negligence or incompetence.

12. Cause does not exist to revoke or suspend Respondents' real estate licenses, pursuant to Business and Professions Code section 10177, subdivision (g), for demonstrating negligence or incompetence, as set forth in Factual Findings 1-17, and Legal Conclusions 1, 8, and 11.

13. With no persuasive evidence of mitigation or rehabilitation, and no persuasive evidence to dispute the Department's audit findings, Respondents' violations of law and regulation establish that the continued licensure of Respondents would endanger the public. Thus, revocation of Respondents' real estate licenses is necessary for public protection.

ORDER

Not Adopted

All licenses and licensing rights of Respondent Mir Noorbakhsh under the Real Estate Law are revoked.

All licenses and licensing rights of Respondent Platinum Acceptance Corp. under the Real Estate Law are revoked.

All licenses and licensing rights of Respondent Robert Domenic Lonardo under the Real Estate Law are revoked.

Dated: April 23, 2012

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

ELLIOTT MAC LENNAN SBN 195298
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
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FILED

MAR - 1 2010

DEPARTMENT OF REAL ESTATE
BY: [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of PLATINUM ACCEPTANCE CORP.; and MIR NOORBAKHSH, individually and as designated officer of Platinum Acceptance Corp.; and ROBERT DOMENIC LONARDO, Respondents.	No. H-36482 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, for cause of Accusation against PLATINUM ACCEPTANCE CORP., MIR NOORBAKHSH, individually and as designated officer of Platinum Acceptance Corp., and ROBERT DOMENIC LONARDO aka Robert Leonardo, alleges as follows:

1.

The Complainant, Robin Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against PLATINUM ACCEPTANCE CORP., MIR NOORBAKHSH and ROBERT DOMENIC LONARDO.

2.

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.

3.

License History

A. PLATINUM ACCEPTANCE CORP. ("PAC"). At all times mentioned, Respondent PAC was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On July 18, 2006, PAC was originally licensed as a corporate real estate broker. At all times mentioned herein, Respondent PAC was authorized to act by and through Respondent MIR NOORBAKHSH as PAC's broker designated pursuant to Business and Professions Code (hereinafter "Code") Sections 10159.2 and 10211 to be responsible for ensuring compliance with the Real Estate Law.

B. MIR NOORBAKHSH. At all times mentioned, Respondent MIR NOORBAKHSH ("NOORBAKHSH") was licensed or had license rights issued by the Department as a real estate broker. On March 15, 2006, NOORBAKHSH was originally licensed as a real estate broker and on July 18, 2006, became the designated officer of PAC.

C. ROBERT DOMENIC LONARDO. At all times mentioned, Respondent ROBERT DOMENIC LONARDO aka Robert Leonardo dba Mitigation Online Consultants and Rob Lonardo Consulting and Productions Inc. (LONARDO) was licensed or had license rights

issued by the Department as a real estate salesperson. On November 16, 2005, LONARDO was originally licensed as a real estate salesperson. On May 17, 2007, LONARDO's salesperson license was conditionally suspended pursuant to Code Section 10156.7. On November 15, 2009, LONARDO's salesperson license expired. The Department re retains jurisdiction over expired and lapsed license rights pursuant to Code Section 10103.

D. MIR NOORBAKHSH is the corporate President of PAC and is sole shareholder of PAC.

Brokerage

4.

At all times mentioned, in the City of Fullerton and County of Orange, PAC and NOORBAKHSH acted as real estate brokers conducting licensed activities within the meaning of Code Sections 10131(d) and 10131.2. PAC, NOORBAKHSH and LONARDO engaged in the business of a loan modification and an advance fee brokerage. For compensation or in expectation of compensation and for fees often collected in advance, Respondents contacted lenders' loss mitigation departments on behalf of economically distressed homeowner-borrowers seeking modification of the terms of their home loans including, but not limited to, repayment plans, forbearance, Deed-In-Lieu of Foreclosure, partial claims, and reduction in principal or interest. PAC, NOORBAKHSH and LONARDO handled the following loan modifications during the audit period:

Loan Modifications	Advance Fees Collected	Transferred from Diamond Funding Corporation
133	$225,850.14	$190,009.96

Audit Examination

5.

On November 30 2009, the Department completed an audit examination of the books and records of PAC pertaining to the loan modification and advance fee activities described in Paragraph 4, which require a real estate license. The audit examination covered a period of time beginning on September 1, 2006 to August 31, 2009. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 090041 and the exhibits and work papers attached to said audit report.

Bank and Trust Accounts

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, PAC accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties, including lenders, borrowers, homeowners for loan modifications handled by PAC. Thereafter PAC made deposits and or

disbursements of such trust funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by PAC in the bank account as follows:

"Platinum Acceptance Corp. Bank Account
Account No. 200041727298
Wachovia Bank
P.O. Box 563966
Charlotte NC 28256-3966 (B/A #1)

"Platinum Acceptance Corp. Bank Account
Account No. 06907-70288
Bank of America
17430 Brookhurst St.
Fountain Valley, CA 92708 (B/A #2)

Audit Violations

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents PAC and NOORBAKHSH acted in violation of the Code and the Regulations in which Respondents:

(a) PAC, NOORBAKHSH and LONARDO 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 B/A#1 trust account, to an amount which, on August 31, 2009, was $205,679.39, less than the existing

aggregate trust fund liability 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 Sections 10130 (LONARDO only), 10145, 10176(i) and 10177(g) and Regulation 2832.1. The $205,679.39 is due to the unauthorized withdrawal by expired licensee ROBERT DOMENIC LONARDO aka Robert Leonardo, as set forth in **Table: Unauthorized Withdrawals**

Counter Withdrawal on 06/12/09	$ < 59,707.25>
Counter Withdrawal on 06/16/09	$ < 66,879.68>
Counter Withdrawal on 06/23/09	$ < 6,336.03>
Counter Withdrawal on 07/06/09	$ < 24,675.51>
Check Withdrawal on 07/10/2009	$ < 18,791.09>
Automated debit – Rob Leonardo 07/16/2009	$ < 10,000.00>
Automated debit – Rob Leonardo on 07/17/2009	$ < 14,798.56>
Various debits less than $5,000.00	$ < 4,491.27>
Total	$<205,679.39>

(b) Failed to establish and maintain a trust account at a bank or other recognized financial institution in the name of the broker for deposit of advance fees collected by PAC, in violation of Code Section 10146, including but not limited to homeowner/borrowers Jesus Penaloza/Graciela Calzidillas and Janelle Strohmayer. Neither B/A #1 nor B/A 32 were designated as bank accounts. Sometime in 2009, B/A #2 was re-designated as a trust account after advance fees had been deposited into it.

(c) Permitted LONARDO, an expired licensee and unbonded person, to be a signatory on B/A #1, in violation of Code Section 10145 and Regulation 2834.

(d) Failed to maintain a control record in the form of a columnar record in chronological order of all trust funds including advance fees collected in connection with loan modifications, deposited and disbursed, in violation of Code Section 10145 and Regulation 2831, for the aforesaid homeowner/borrowers.

(e) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all advance fees collected, in violation of Code Section 10145 and Regulation 2831.1, for the aforesaid homeowner/borrowers.

(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 from the general account for loan modification services, in violation of Code Section 10145 and Regulation 2831.2, for the aforesaid homeowner/borrowers; and

(g) Commingled trust funds and personal funds by depositing trust funds in the form of advance fees collected for loan modifications into B/A #2 during 2008 and part of 2009, in violation of Code Sections 10145 and 10176(e) and Regulation 2832.

///

Discipline Statutes

8.

The conduct of Respondents PAC, NOORBAKHSH and LONARDO described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Sections 10130 (LONARDO only), 10145 and 10176(i) Regulation 2832.1
7(b)	Code Section 10146
7(c)	Code Section 10145 and Regulation 2834
7(d)	Code Section 10145 and Regulations 2831
7(e)	Code Section 10145 and Regulation 2831.1
7(f)	Code Section 10145 and Regulation 2831.2
7(g)	Code Sections 10145 and 10176(e) and Regulation 2832

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of Respondents PAC, NOORBAKHSH and LONARDO under the provisions of Code Sections 10130, 10176(e), 10176(i), 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION
(Loan Modification Services)

9.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 8, above.

10.

At all times mentioned herein, Respondent LONARDO engaged in the business of a loan modification and advance fee brokerage, within the definition of Code Sections 10131.2 and 10131(d), as aforesaid in Paragraph 4.

General Allegations

11.

During 2008 and continuing thereafter to date, Respondents PAC, NOORBAKHSH and LONARDO, dba Mitigation Online Consultants, solicited economically distressed homeowner-borrowers facing foreclosure and eviction from their homes, offered loan modification service, charged and collected advance fees paid to PAC:

///

///

12.

Table: Loan Modification Transactions

Homeowner	Agent(s)	Advance Fee	Refund
Larry/Cathy Hill	The Buzzones	$950	$475
Anthony/Catherine Triola	"Pat"	$1,000	$475

13.

Loan Modification Violations

The conduct of offering of a "100 Money Back Guarantee", in order to induce reliance of economically distressed homeowner-borrowers, and in otherwise misleading borrowers into a loan modification scheme to the detriment of the forenamed homeowners, as set forth in Paragraphs 9 through 12 above, wherein upon notice of cancellation said homeowners only received $475 of their original fees paid, constitutes grounds to discipline the license and/or license rights of Respondents pursuant to Code Sections:

a. 10176(a) for substantial misrepresentation with respect to the forenamed homeowners.

b. 10176(b) for making false promises of a character likely to influence, persuade, entice or induce the forenamed homeowners.

c. 10235 for misleading advertising.

d. 10177(d) for willful disregard of, or violation of

the Real Estate Law.

e. 10177(g) for negligence or incompetence.

f. 10137 for employing and/or compensating unlicensed los mitigation agents and counselors Eric "Pat" Buzzone and Kimberly Buzzone.

g. 10176(a)/10177(g) for misrepresenting the offering of the loan modification scheme.

Negligence

9.

The overall conduct of Respondents PLATINUM ACCEPTANCE CORP. and MIR NOORBAKHSH constitutes negligence and is cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

Supervision and Compliance

10.

The overall conduct of Respondent MIR NOORBAKHSH constitutes a failure on said Respondents' part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of PAC as required by Code Section 10159.2 and Regulation 2725, and to keep PAC in compliance with the Real Estate Law, and is cause for discipline of the real estate license and license rights of all Respondents pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

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 Respondents PLATINUM ACCEPTANCE CORP., MIR NOORBAKHSH and ROBERT DOMENIC LONARDO, under the Real Estate Law (Part 1 of vision 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 24 day of February 2010.

Deputy Real Estate Commissioner

cc: Platinum Acceptance Corp.
c/o Mir Noorbakhsh D.O.
Robert Domenic Lonardo
Robin Trujillo
Sacto
Tiffany D. Williams
Audits - Godswill Keraoru