

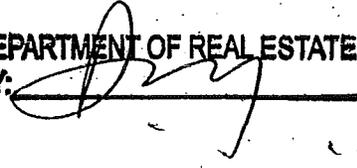
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FILED

FEB 17 2012

DEPARTMENT OF REAL ESTATE

BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 To:)
12)
12 SUNCOAST MORTGAGE CORP.;) No. H- 37888 LA
13 and LOAN TUONG NGUYEN)
13 individually and as designated)
14 officer of Suncoast Mortgage Corp.,) ORDER TO DESIST
15) AND REFRAIN
16) (B&P Code Section 10086)
16)

17 The Commissioner ("Commissioner") of the California Department of Real Estate
18 ("Department") caused an investigation to be made of the activities of SUNCOAST
19 MORTGAGE CORP. ("SMC") and LOAN TUONG NGUYEN ("NGUYEN"). Based on that
20 investigation, the Commissioner has determined that:

21 SMC and NGUYEN are engaging in acts as real estate brokers in the State of
22 California within the meaning of Business and Professions Code ("Code") Section 10131(a) and
23 10131(d); and

24 Based on the findings of that investigation, set forth below, the Commissioner
25 hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order
26 under the authority of Section 10086 of the Code.
27

1 FINDINGS OF FACT

2 1.

3 From August 17, 2000, through the present, Respondent SMC has been licensed
4 as a real estate corporation. At all times relevant herein, SMC was acting by and through
5 Respondent NGUYEN as its designated broker-officer pursuant to Business and Professions
6 Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate
7 Law. Respondent SMC is licensed to do business as Suncoast Investments Realty.

8 2.

9 From August 17, 2000 through the present, Respondent NGUYEN has been
10 licensed as a real estate broker.

11 3.

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

18 4.

19 SMC is owned by NUGYEN, its president.

20 (Substantial Misrepresentations/Fraud/Dishonest Dealing via Sham Escrow)

21 5.

22 At no time mentioned herein have Direct Investments, LLC, D.I. Investments,
23 LLC, D.I. Financial Services, LLC and Lynn Eichenberger ever been licensed by the
24 Department in any capacity.

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1 was to handle the escrow. Escrow was to close on or before November 30, 2009, at which time
2 the seller was to deliver a grant deed for the 1721 Park St. property to the buyers.

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4 9.

5 Respondent NGUYEN made various misrepresentations to buyers John T. and
6 Katrina P. including that Suncoast Investments Realty held title to the 1721 Park St. property.
7 Suncoast Investments Realty was not the true owner of the 1721 Park St. property. Respondent
8 NGUYEN transferred some or all of John T. and Katrina P's earnest money deposit to D.I.
9 Financial Services, LLC prior to the close of escrow. Escrow never closed on this transaction
10 and Suncoast Investments Realty never delivered a grant deed for the 1721 Park St. property to
11 John T. and Katrina P. Respondents refused to refund any part of John T. and Katrina P's
12 earnest money deposit.

13 18648 Cedar Cir.

14 10.

15 On or about October 6, 2009, Respondent NGUYEN induced buyers Lyndon P.
16 and Phuong-Ly B. to enter into a purchase agreement for the purchase of real property located at
17 18648 Cedar Cir., Fountain Valley, California ("18648 Cedar Cir. property"). The purchase
18 agreement listed Suncoast Investments Realty as the seller of the 18648 Cedar Cir. property.
19 The purchase agreement stated that the buyers' earnest money deposit of \$240,000 was to be
20 held by SMC's escrow division. Escrow was to close on or before December 10, 2009, at which
21 time the seller was to deliver a grant deed for the 18648 Cedar Cir. property to the buyers.

22 11.

23 Respondent NGUYEN made various misrepresentations to buyers Lyndon P. and
24 Phuong-Ly B. including that Suncoast Investments Realty held title to the 18648 Cedar Cir.
25 Property. Suncoast Investments Realty was not the true owner of the 18648 Cedar Cir. property.
26 Respondent NGUYEN transferred some or all of Lyndon P. and Phuong-Ly B's earnest money
27 deposit to D.I. Financial Services, LLC prior to the close of escrow. Escrow never closed on

1 this transaction and Suncoast Investments Realty never delivered a grant deed for the 18648
2 Cedar Cir. property to Lyndon P. and Phuong-Ly B. Respondents refused to refund any part of
3 Lyndon P. and Phuong-Ly B's earnest money deposit.

4 1800 N. Holbrook St.

5 12.

6 On or about October 26, 2009, Respondent NGUYEN induced buyers Lyndon P.
7 and Phuong-Ly B., to enter into a purchase agreement for the purchase of real property located
8 at 1800 N. Holbrook Street, Anaheim, California ("1800 N. Holbrook St. property".) The
9 purchase agreement listed Suncoast Investments Realty as the seller of the 1800 N. Holbrook St.
10 property. The purchase agreement stated that the buyers' earnest money deposit of \$138,000
11 was to be held in escrow by SMC's escrow division. Escrow was to close on or before
12 December 31, 2009, at which time the seller was to deliver a grant deed for the 1800 N.
13 Holbrook St. property to the buyers.

14 13.

15 Respondent NGUYEN made various misrepresentations to buyers Lyndon P. and
16 Phuong-Ly B. including that Suncoast Investments Realty held title to the 1800 N. Holbrook St.
17 property. Suncoast Investments Realty was not the true owner of the 1800 N. Holbrook St.
18 property. Respondent NGUYEN transferred some or all of Lyndon P. and Phuong-Ly B's
19 earnest money deposit to D.I. Financial Services, LLC prior to the close of escrow. Escrow
20 never closed on this transaction and Suncoast Investments Realty never delivered a grant deed
21 for the 1800 N. Holbrook St. property to Lyndon P. and Phuong-Ly B. Respondents refused to
22 refund any part of Lyndon P. and Phuong-Ly B's earnest money deposit.

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1 property to the buyer by January 15, 2010.

2 17.

3 Respondent NGUYEN made various misrepresentations to Helen Hoa N.
4 including that Suncoast Investments Realty held title to the 134 S. Magnolia Ave. #19C
5 property. Suncoast Investments Realty was not the true owner of the 134 S. Magnolia Ave.
6 #19C property. Respondent NGUYEN transferred some or all of Helen Hoa N.'s earnest money
7 deposit to D.I. Financial Services, LLC prior to the close of escrow. Escrow never closed on
8 this transaction and Suncoast Investments Realty never delivered a grant deed or possession for
9 the 134 S. Magnolia Ave. #19C property to Helen Hoa N. Respondents refused to refund any
10 part of Helen Hoa N.'s earnest money deposit.

11 19342 Baywater Lane

12 18.

13 On or about November 2, 2009, Respondent NGUYEN induced homeowner
14 Oanh N. to enter into a "Cash for Keys" agreement with Direct Investments, LLC for the sale of
15 real property located at 19342 Baywater Lane, Huntington Beach, California ("19342 Baywater
16 Lane property"). The 19342 Baywater Lane property was in default and facing foreclosure.
17 Said Cash for Keys agreement listed Oanh N. as the seller of the 19342 Baywater Lane property.
18 The purchase agreement stated that Oanh N. would receive six (6) percent of the sale price for
19 the 19342 Baywater Lane property and that Oanh N.'s current lender would be paid in full.
20 Respondent NGUYEN further induced Oanh N. to sign a limited power of attorney for D.I.
21 Financial Services, LLC.

22 19.

23 Oanh N. subsequently discovered that a Deed of Trust and Assignment of Rents
24 for the 19342 Baywater Lane property containing her forged signature had been notarized and
25 recorded on November 9, 2009.

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Table: Sham Escrow Victims

Victim/Buyer	Seller; True Owner?	Escrow Agent	Date	Earnest Money Deposits Paid Into Escrow	False Payee	Deposit Status
Donna D.						
7705 Timber Cir.	Suncoast Investments Realty; No	In House Escrow	9/17/09	\$ 93,125.00	D.I.	Converted; refund refused
Sub-Total				\$ 93,125.00		
John P.						
1721 Park Street	Suncoast Investments Realty; No	In House Escrow	9/17/09	\$ 331,250.00	D.I.	Converted; refund refused
Sub-Total				\$ 424,375.00		
Lyndon P.						
18648 Cedar Cir.	Suncoast Investments Realty; No	In House Escrow	9/6/09	\$ 240,000.00	D.I.	Converted; refund refused
1800 N. Holbrook	Suncoast Investments Realty; No	In House Escrow	9/26/09	\$ 138,000.00	D.I.	Converted; refund refused
Sub-Total				\$ 802,375.00		
Hanh D.						
12041 Gilbert Street	Suncoast Investments Realty; No	In House Escrow	11/6/09	\$ 207,500.00	D.I.	Converted; refund refused
Sub-Total				\$1,009,875.00		
Helen N.						
134 S. Magnolia #19 C	Suncoast Investments Realty; No	In House Escrow	11/6/09	\$ 80,000.00	D.I.	Converted; refund refused
Sub-Total				\$ 1,089,875		
Oanh N.						
19342 Baywater	Oanh N.	In House	11/2/09	Cash for Keys (no deposit)	n/a	Oanh N. promised

		Escrow				6% of Sale Price; none received
Sub-Total					n/a	
Total				\$1,089,875.00		

21.

(Audit)

On January 27, 2011, the Department completed an audit examination of the books and records of Respondent SMC pertaining to the property management activities described in the Preamble, which require a real estate license. The audit examination covered a period of time beginning on July 1, 2007 to August 31, 2010. The audit examination revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations ("Regulations") set forth in the following paragraphs, and more fully set forth in Audit Report LA 100043 and the exhibits and work papers attached thereto.

(Trust Account)

22.

At all times mentioned, in connection with the activities described in Finding 23, above, SMC accepted or received funds including funds in trust ("trust funds") from or on behalf of actual or prospective parties to transactions including buyers, sellers, lenders and borrowers handled by SMC and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned, during the audit period, said trust funds were deposited and/or maintained by SMC in the bank account as follows:

"Suncoast Mortgage Corp Escrow Trust Account ("B/A 1")
 XXXXXX0819"
 First Vietnamese American Bank
 Westminster, California

1 (Audit Violations)

2 23.

3 In the course of activities described in the Preamble and Finding 22, above, and
4 during the examination period, described in Finding 21, Respondents SMC and NGUYEN,
5 acted in violation of the Code and the Regulations in that Respondents:
6

7 (a) Permitted, allowed or caused the disbursement of trust funds from the escrow
8 trust account, where the disbursement of funds reduced the total of aggregate funds in SMC's
9 escrow trust accounts, to an amount which, on August 31, 2010, was at a minimum
10 \$3,575,908.08, less than the existing aggregate trust fund accountability of SMC to every
11 principal who was an owner of said funds, without first obtaining the prior written consent of the
12 owners of said funds, in violation of Code Section 10145(a) and Regulations 2832.1, 2950(d),
13 2950(g) and 2951.
14

15 (b) Failed to maintain a control record in the form of a columnar record in
16 chronological order of all trust funds received, deposited and disbursed by SMC's in-house
17 escrow through the instrumentality of SMC's escrow trust account, in violation of Code Section
18 10145 and Regulations 2831, 2950(d) and 2951.

19 (c) Failed to maintain a separate record for each beneficiary or escrow transaction,
20 thereby failing to account for all trust funds collected, in violation of Code Section 10145 and
21 Regulations 2831.1, 2950(d) and 2951.
22

23 (d) Failed to perform a monthly reconciliation of the balance of the separate
24 records maintained pursuant to Regulation 2831.1 with the control record of all trust funds
25 received and disbursed by the broker escrow trust account, in violation of Code Section 10145
26 and Regulations 2831.2, 2950(d) and 2951.
27

1 (e) Allowed Thang Vy Nguyen to be a signatory on the escrow trust account,
2 during a time he was not licensed by the Department in any capacity and was not covered by a
3 fidelity bond, in violation of Code Section 10145 and Regulations 2834, 2950(d) and 2951.

4 (f) Failure to have buyers and sellers sign or initial escrow instruction or amended
5 escrow instructions, in violation of Code Section 10145 and Regulation 2950(b).

6
7 (g) Failure to deliver to buyers and sellers copies of escrow instructions, amended
8 instructions and/or supplemental escrow instructions, in violation of Code Section 10145 and
9 Regulation 2950(c).

10
11 (h) Failed to disclose in writing to all parties of his financial interest and
12 ownership of SMC's escrow division, in violation of Code Section 10145 and Regulation
13 2950(h).

14 (i) Collected initial earnest money deposits from buyers to purchase properties.
15 SMC provided purchase contracts to buyers and the purchase contracts indicated that SMC's
16 dba Suncoast Investments Realty was the seller; however, Suncoast Investments Realty was not
17 the owner of said properties, in violation of Code Section 10176(a).

18
19 (j) Collected monies from buyers and transferred \$1,456,500.00 of said funds to
20 others. Additionally, SMC provided escrow instructions and amended instructions not signed
21 by the buyer or seller which instructed SMC to wire trust funds from SMC's escrow trust
22 account to Direct Investments Financial, LLC, in violation of Code Sections 10145 and
23 10176(i).

24
25 (k) Respondent NGUYEN disbursed funds from SMC's escrow trust account
26 and transferred funds in the amount of \$155,000 to Respondent NGUYEN's personal and
27 business accounts including but not limited to D.I. Financial Services Inc. without

1 documentation to explain or account for said transfers, in violation of Code Sections 10176(e),
2 10145 and Regulation 2832.

3 (l) Failed to disclose SMC's license number on solicitation materials that were
4 intended to be the first point of contact with consumers, in violation of Code Section 10140.6
5 and Regulation 2773.

6 (m) SMC failed to make the licenses of seven of its real estate salespersons
7 available for inspection during the audit, in violation of Code Section 10160 and Regulation
8 2753.

9 (n) SMC failed to notify the Department of the termination of employment of its
10 salesperson Ta Trung Nguyen (Department License No. 01259034) within five (5) days, as
11 required under Code Section 10161.8 and Regulation 2752 and in violation thereunder.
12

13 (o) SMC failed to have a written broker-salesperson relationship agreement with
14 its salesperson Ta Trung Nguyen, as required under Regulation 2726 and in violation
15 thereunder.
16

17 (p) Failure to retain all required records including, but not limited to, escrow
18 files, trust fund records, escrow receipts, invoices, canceled checks, and records of
19 disbursements related to trust funds, salesperson license certificates and agreements, in violation
20 of Code Section 10148 and Regulation 2950(e).

21 (q) Respondent NGUYEN failed to exercise reasonable control and supervision
22 over the activities conducted by SMC's employees and/or licensees as necessary to secure full
23 compliance with the Real Estate laws, as required under Code Section 10159.2 and Regulation
24 2725, is in violation of Code Section 10177(h).
25

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27

(Negligence)

24.

The overall conduct of Respondents SMC and NGUYEN constitutes negligence in violation of Code Section 10177(g).

(Fiduciary Duty)

25.

The conduct, acts and omissions of Respondents SMC and NGUYEN constitute a breach of fiduciary duty, owed to SMC's clients, of good faith, trust, confidence and candor, within the scope of their contractual relationship and for falsely misrepresenting property ownership and for failing to render services promised, in violation of Code Sections 10176(i) and/or 10177(g) and constitutes cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

(World Wide Affinity Fraud)
(NGUYEN)

26.

Under the ruse of seeking buyers for properties facing foreclosure, Respondent Nguyen advertised to the world wide Vietnamese community soliciting deposits for properties she falsely claimed she owned, placed collected buyer deposits from would-be purchasers into SMC's in-house escrow controlled by her, then converted those trust funds by paying them out to other entities unconnected to SMC's escrow or to herself, in violation of Code Section 10176(c) and 10176(i) and/or 10177(j), for a continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons and for fraud and dishonest dealing.

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CONCLUSIONS OF LAW

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The conduct of Respondents SMC and NGUYEN, as alleged and described in Finding 23 , above, violated Code Sections 10140.6, 10145, 10148, 10159.2, 10160, 10161.8, 10176(a), 10176(e) and 10176(i) and the Regulations 2725, 2726, 2752, 2753, 2773, 2831, 2831.2, 2832, 2832.1, 2834, 2950(b), 2950(c), 2950(d), 2950(e), 2950(g), 2950(h), and 2951, and Code Sections 10159.2 and 10177(h) and Regulation 2725, as to Respondent NGUYEN.

28.

The conduct of SMC and NGUYEN described in Finding 24, above, violated Code Section 10177(g).

29.

The conduct of SMC and NGUYEN described in Finding 25, above, violated Code Section 10177(g).

30. 1

The conduct of SMC and NGUYEN described in Finding 26, above, violated Code Sections 10176(c) and 10176(i) .

