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FILED

JUL 23 2012

DEPARTMENT OF REAL ESTATE
BY: *Quintana Velasco*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
NICOLE PATRICE FUNN,)
)
Respondent.)
_____)

No. H-37908 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 April 10, 2012 and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

1.

On February 15, 2012, Robin Trujillo made the 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, return receipt requested, and by regular mail to NICOLE PATRICE FUNN's ("Respondent") last known mailing address on file with the Department on February 23, 2012.

On April 10, 2012, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division

4 of the California Business and Professions Code ("Code") as a real estate broker.

3.

On February 25, 2009, Respondent filed a Fictitious Business Name Statement with the Los Angeles Registrar-Recorder County Clerk. This Fictitious Business Name Statement listed Respondent as the registrant for "Home Keepers of America" (hereinafter "HKA").

4.

On June 20, 2008, Respondent filed a fictitious business name statement with the Auditor/Controller - Recorder for the County of San Bernardino. The fictitious business name filed by Respondent was "U.S. Capital Group Inc. Foreclosure Div."

5.

On July 10, 2009, Ronald & Tauni Roster ("the Rosters") entered into an agreement with HKA, in which HKA agreed to negotiate a modification of the Rosters' loan, which was secured by real property located at 2171 Kearney Avenue SW, Naples FL, in exchange for payment of a \$3,500 advance fee payment to HKA. On July 10, 2009, the Rosters submitted an advance fee of \$3,500 to HKA.

6.

Among the terms and conditions of the agreement described in paragraph 5 above, was a promise that HKA would return 35% of the fees if the mortgage note was not purchased by HKA. The agreement further stated that HKA had 90 days from termination of the contract to refund any money owed to the client. HKA never obtained a modification of the Roster's mortgage loan, nor did HKA purchase the Roster's loan. On March 5, 2010, the Rosters received a letter from HKA, in which HKA agreed to refund the Rosters 35% of their fees. The Roster's did not receive this refund within 90 days of terminating their contract, or at any other time.

DETERMINATION OF ISSUES

1.

Respondent never applied with the Department to use the fictitious business name described in Finding 4 above. This constitutes a violation of Code Section 10159.5 and Regulation 2731. Respondent also used the fictitious business name

described in Finding 3 above before obtaining a license with the Department to use it, in violation of Regulation 2731. These violations provide cause for the suspension or revocation of the licenses and license rights of Respondent pursuant to Code Sections 10177(d) and 10177(g).

2.

The agreement made by HKA, as described in Finding 5 above, constitutes an advance fee agreement within the meaning of Code Section 10026. Respondent failed to submit the advance fee agreement, described in Finding 5 above, to the Commissioner ten days before using it, in violation of Code Sections 10085 and 10085.5, as well as Section 2970 of Title 10, California Code of Regulations ("Regulations"). This provides cause for the suspension or revocation of the licenses and license rights of Respondent pursuant to Code Sections 10085, 10177(d) and 10177(g).

3.

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

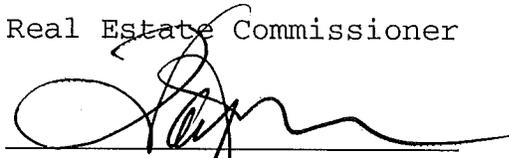
ORDER

The license and license rights of Respondent NICOLE PATRICE FUNN under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on AUG 13 2012.

DATED: 7/13/2012

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

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1 Department of Real Estate
2 320 West Fourth Street, Suite 350
3 Los Angeles, CA 90013

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(213) 576-6982

DEPARTMENT OF REAL ESTATE
BY: Jana B. Dow

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. <i>H-37908 LA</i>
NICOLE PATRICE FUNN,) <u>DEFAULT ORDER</u>
)
)
)
Respondent.)
)

Respondent NICOLE PATRICE FUNN, 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

APRIL 10, 2012

Real Estate Commissioner

By:

Phillip Ihde

PHILLIP IHDE
Regional Manager

1 JAMES DEMUS, Counsel (SBN 225005)
2 Department of Real Estate
3 320 West Fourth St., #350
4 Los Angeles, CA 90013

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FEB 23 2012

4 (213) 576-6982
5 (213) 576-6910 (direct)

DEPARTMENT OF REAL ESTATE
BY: *Austine Valencia*

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)	No. H-37908 LA
13 NICOLE PATRICE FUNN,)	<u>A C C U S A T I O N</u>
14 Respondent.)	

15
16 The Complainant, Robin Trujillo, a Deputy Real Estate
17 Commissioner of the State of California, for cause of
18 Accusation against NICOLE PATRICE FUNN, is informed and alleges
19 as follows:

20 1.

21 The Complainant, Robin Trujillo, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation
23 in her official capacity.

24 2.

25 NICOLE PATRICE FUNN (hereinafter "FUNN") is presently
26 licensed and/or has license rights under the Real Estate Law,
27 as a real estate broker.

1 3.

2 On February 25, 2009, FUNN filed a Fictitious Business
3 Name Statement with the Los Angeles Registrar-Recorder County
4 Clerk. This Fictitious Business Name Statement listed FUNN as
5 the registrant for "Home Keepers of America" (hereinafter "HKA")

6 4.

7 At all times material herein, Respondent FUNN was
8 engaged in the business of, acted in the capacity of,
9 advertised or assumed to act as a real estate broker in the
10 State of California, within the meaning of Code Sections
11 10131(d) and 10131.2, including brokering mortgage loans and
12 performing loan modification activities and claiming,
13 demanding, charging, receiving, collecting or contracting for
14 the collection of an advance fee, within the meaning of Code
15 Section 10026, including, but not limited to, the following
16 loan modification activities with respect to loans which were
17 secured by liens on real property.

18 5.

19 FIRST CAUSE FOR ACCUATION

20 (ADVANCE FEE AGREEMENT)

21 On July 10, 2009, Ronald & Tauni Roster ("the
22 Rosters") entered into an agreement with HKA, in which HKA
23 agreed to negotiate a modification of the Rosters' loan, which
24 was secured by real property located at 2171 Kearney Avenue SW,
25 Naples FL, in exchange for payment of a \$3,500 advance fee
26 payment to HKA. On July 10, 2009, the Rosters submitted an
27 advance fee of \$3,500 to HKA.

1 6.

2 Among the terms and conditions of the agreement
3 described in paragraph 5 above, was a promise that HKA would
4 return 35% of the fees if the mortgage note was not purchased
5 by HKA. The agreement further stated that HKA had 90 days from
6 termination of the contract to refund any money owed to the
7 client. HKA never obtained a modification of the Roster's
8 mortgage loan, nor did HKA purchase the Roster's loan. On
9 March 5, 2010, the Rosters received a letter from HKA, in which
10 HKA agreed to refund the Rosters 35% of their fees. The
11 Roster's did not receive this refund within 90 days of
12 terminating their contract, or at any other time.

13 7.

14 The agreement made by HKA, as described in Paragraph
15 5 above, constitutes an advance fee agreement within the
16 meaning of Code Section 10026. FUNN failed to submit the
17 advance fee agreement, described in paragraphs 5 above, to the
18 Commissioner ten days before using it, in violation of Code
19 Sections 10085 and 10085.5, as well as Section 2970 of Title
20 10, California Code of Regulations ("Regulations"). This
21 provides cause for the suspension or revocation of the licenses
22 and license rights of Respondent FUNN pursuant to Code Sections
23 10085, 10177(d) and/or 10177(g).

24 ///

25 ///

26 ///

27 ///

1 8.

2 SECOND CAUSE FOR ACCUASATION

3 (FICTITIOUS BUSINESS NAMES)

4 On or about June 20, 2008, FUNN filed a fictitious
5 business name statement with the Auditor/Controller -Recorder
6 for the County of San Bernardino. The fictitious business name
7 filed by FUNN was "U.S. Capital Group Inc. Foreclosure Div."
8 This name was also used in the July 10, 2009 loan modification
9 agreement described in paragraph 5 above.

10 9.

11 FUNN never applied with the Department to use the
12 fictitious business name described in paragraphs 8 above. This
13 constitutes a violation of Code Section 10159.5 and Regulation
14 2731. FUNN also used the fictitious business name described in
15 Paragraph 3 above before obtaining a license with the
16 Department to use it, in violation of Regulation 2731.

17 10.

18 The violations described in paragraph 9 above
19 provide cause for the suspension or revocation of the licenses
20 and license rights of FUNN pursuant to Code Sections 10177(d)
21 and/or 10177(g).

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23 ///

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondent NICOLE PATRICE FUNN under the Real Estate Law, that
6 Complainant be awarded its costs of investigation and
7 prosecution of this case, and for such other and further relief
8 as may be proper under other applicable provisions of law.
9

10 Dated at Los Angeles, California

11 this 15 day of February, 2012
12

13 
14 _____
15 Robin Trujillo
16 Deputy Real Estate Commissioner
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23
24

25 cc: Nicole Patrice Funn
26 Robin Trujillo
27 Sacto.