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

FILED

MAY - 4 2012

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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To:	)	
JAMES ALFRED SANTANA, doing business as Above Board Realty, Bankers First Real Estate, West Pointe Escrow and Silex Settlement Services,	)	No. H- 38111 LA
	)	ORDER TO DESIST AND REFRAIN (B&P 10086)
Respondents	)	

The Commissioner ("Commissioner") of the California Department of Real Estate ("Department") caused an investigation to be made of the activities of JAMES ALFRED SANTANA ("SANTANA").

Based on that investigation, the Commissioner has determined that SANTANA has engaged in or is engaging in acts or are attempting to engage in practices constituting violations of the Business and Professions Code and/or Title 10, California Code of Regulations. ("Regulations").

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FINDINGS OF FACT

1.

JAMES ALFRED SANTANA ("SANTANA"). At all times mentioned, Respondent SANTANA was licensed or had license rights issued by the Department as a real estate broker. On March 28, 1995, SANTANA was originally licensed as a real estate broker.

2.

At all times mentioned, in the City of Fountain Valley, County of Orange, SANTANA acted as real estate brokers conducting licensed activities within the meaning of:

A. Code Section 10131(a). Respondent operated a residential resale brokerage doing business as Above Board Realty and Bankers First Real Estate Respondent engaged in the business of acted in the capacity of, advertised or assumed to act a as real estate broker, including the solicitation for listings of and the negotiation of the sale of real property as the agent of others.

B. Code Section 10131(d). Respondent 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 including loss mitigation, loan modifications, foreclosure prevention, short sales and short sale-repurchase financing.

C. In addition, Respondent conducted broker-controlled escrows through his escrow operation doing business as and West Pointe Escrow, and Silex Settlement Services, 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.

(Broker-Controlled Escrow Audit)

3.

On September 7, 2011, the Department completed an audit examination of the books and records of SANTANA pertaining to the broker-controlled activities described in Finding 2, herein above, which require a real estate license. The audit examination covered a period of time beginning on August 1, 2007 and ending on February 28, 2011. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully set forth in Audit Report LA 100153 and the exhibits and workpapers attached thereto.

4.

At all times mentioned, in connection with the activities described in Finding 2, above, SANTANA accepted or received funds including funds in trust (hereinafter "trust funds") for real estate transactions escrowed by SANTANA's in-house escrow operation. Thereafter SANTANA made disbursements of such trust funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by SANTANA in the trust accounts as follows:

"Above Board Real Estate Solutions
No. xxxxxx6995"
Wells Fargo Bank
Portland, OR (T/A 1)

"Silex Settlement Services
No. xxxxxx3778
US Bank
ST. Paul, MN (T/A 2)

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(Broker-Controlled Escrow Audit Violations)

5.

In the course of activities described in Findings 2 and 4 above, and during the audit examination period in Finding 3, Respondent SANTANA acted in violation of the Code the Regulations in that SANTANA:

(a) Permitted, allowed or caused the disbursement of trust funds from the escrow trust accounts T/A 1 and T/A 2, where the disbursement of funds reduced the total of aggregate funds in the trust accounts set forth below, to an amount which was less than the existing aggregate trust fund liability of SANTANA 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(g) and 2951:

- T/A 1 $ 1,000.00
- T/A 2 $23.323.50

(b) Failed to maintain an accurate and complete control record in the form of a columnar record in chronological order of all trusts funds received and disbursed by SANTANA's escrow operation, West Pointe Escrow, and Silex Settlement Services, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.

(c) Failed to maintain an accurate and complete separate record of all trusts funds received, deposited and disbursed by SANTANA's escrow operation, West Pointe Escrow, in violation of Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

(d) 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 for trust accounts T/A 1 and T/A 2, in violation of Code Section 10145 and Regulations 2831.2, 2950(d) and 2951.

(e) Permitted Gonzalo Ramos, an unlicensed and unbonded person, to be an authorized signatory on trust accounts T/A 1 and T/A 2, into which were deposited trust funds, in violation of Code Section 10145 and Regulations 2834(a), 2950(d) and 2951.

(f) T/A 1 and T/A 2 were neither in the name of the broker as trustee at a bank or other financial institution, nor designated as trust accounts, in violation of Code Section 10145 of the Code and Regulations 2832(a), 2950(d) and 2951.

(g) Escrow instructions were not signed nor initialed by buyers and sellers in the Catalpa purchase and sale transaction, in violation of Code Section 10145 and Regulations 2950(b), 2950(d) and 2951.

(h) Failed to disclose in writing to all parties of SANTANA's financial interest and ownership interest of his escrow operation, in violation of Code Sections 10145 and 10176(g) and Regulation 2950(h).

(i) Failed to retain the salesperson license certificate for eleven (11) salespersons, in violation of Code Section 10160 and Regulation 2753.

(j) Failed to maintain a signed broker salesperson agreement with eight (8) salespersons, in violation of Regulation 2726.

(k) Failed to notify the Department of the termination of one salesperson, Jaime Aguliar, in violation of Code Section 10161.8 and Regulation 2752.

(l) Used the fictitious name "James Santana Realty" to conduct licensed activities, without holding a license bearing the fictitious business name, in violation of Code Section 10159.5 and Regulation 2731.

(m) Conducted escrow activities at 8041 Florence Avenue, Downey, California, prior to obtaining a branch office license from the Department, in violation of Code Section 10163 and Regulation 2715.

(n) After notice and subpoena on March 10, 2011, failed to retain all records of SANTANA's activity during the audit period requiring a real estate broker license, in violation of Code Section 10148. Records not provided include but are not limited to West Pointe Escrow

and Silex Settlement Services escrow documentation, escrow trust fund records and reconciliations, invoices and cancelled checks.

(o) SANTANA failed to exercise reasonable control and supervision over the activity of his brokerage including the activities conducted by the fictitious business names operating under his license, including but not limited to Above Board Realty, Bankers First Real Estate, West Pointe Escrow and Silex Settlement Services, to secure full compliance with the Real Estate Law, including principally trust fund handling for operations. Additionally, SANTANA had no system in place for regularly monitoring his compliance with the Real Estate Law especially in regard to establishing, systems, policies and procedures to review escrow trust fund handling especially including escrow trust fund handling for buyers and sellers, in violation of Code Section 10177(h) and Regulation 2725.

(Negligence)

6.

The overall conduct of Respondent SANTANA constitutes negligence and is cause for the suspension or revocation of the real estate license and license rights of said Respondent pursuant to the provisions of Code Section 10177(g).

(Breach of Fiduciary Duty)

7.

The overall conduct, acts and omissions of Respondent SANTANA's constitute a breach of fiduciary duty owed his real estate clientele of buyers and sellers and escrow trust fund beneficiaries for SANTANA's escrow operation, West Pointe Escrow and Silex Settlement Services, of good faith, trust, confidence and candor, within the scope of his relationship with his clientele agreed relationship, in violation of Code Section 10177(g). Additionally, by failing to deposit escrow receipts, earnest money deposits and purchase funds into protected trust accounts,

as set in Finding 5(f), above, SANTANA exposed trust funds to taxing authorities, including the Internal Revenue Service and California Franchise Tax Board and exposed trust funds to the general creditors of his brokerage.

(Supervision and Compliance)

8.

The overall conduct of Respondent JAMES ALFRED SANTANA constitutes a failure on said Respondent's part, as former officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of SANTANA as required by Regulation 2725, and to keep SANTANA in compliance with the Real Estate Law, with specific regard to corporate broker management, escrow operation management and escrow trust fund handling, and for permitting unlicensed third parties to use his broker license in SANTANA's activities which require a real estate license, for pay, and is cause for discipline of the real estate license and license rights of all Respondent pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

CONCLUSIONS OF LAW

9.

The conduct of Respondent SANTANA, described in Finding 5, violated Code Sections 10145, 10148, 10160, 10161.8, 10163, 10176(g) and 10177(h), and Regulations 2715, 2725, 2726, 2731, 2752, 2753, 2773, 2831, 2831.1, 2831.2, 2834(a), 2832(a), 2832.1, 2950(b), 2950(d), 2950(g), 2950(h) and 2951.

10.

The conduct of SANTANA described in Findings 6 and 7, violated Code Section 10177(g).

The conduct of SANTANA described in Finding 8, above, violated Code Sections 10177(d), 10177(g) and 10177(h).

DESIST AND REFRAIN ORDER

Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, it is hereby ordered that:

JAMES ALFRED SANTANA shall immediately, desist and refrain from performing any acts within the State of California for which a real estate broker license is required, unless in compliance with the Real Estate Law.

DATED: May 3, 2012.

REAL ESTATE COMMISSIONER

By WAYNE S. BELL
Chief Counsel

cc: James Alfred Santana
1777 W. Lincoln Ave.
Anaheim, Ca 92801