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FILED

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DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	
AMERICAN SECURITY FINANCIAL	)	NO. H-2786 FR
CORPORATION, a Corporation, and	)	
JOHN SAENZ GUTIERREZ,	)	<u>ACCUSATION</u>
	)	
Respondents.	)	
	)	

The Complainant, BRENDA SMITH, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation in her official capacity against AMERICAN SECURITY FINANCIAL CORPORATION (herein "ASFC") and JOHN SAENZ GUTIERREZ, dba John Saenz Gutierrez American Security Financial (herein "GUTIERREZ") (herein collectively "Respondents), is informed and alleges as follows:

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At all times herein mentioned, Respondents were and now are, licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

At all times herein mentioned, ASFC was and now is licensed by the State of California Department of Real Estate (herein the "Department") as a corporate real estate broker with a mortgage loan originator license endorsement, issued April 26, 2011, by and through GUTIERREZ as designated officer-broker of ASFC, to qualify said corporation and to act for said corporation as a real estate broker.

At all times herein mentioned, GUTIERREZ was and now is licensed by the Department as a real estate broker, with a mortgage loan originator license endorsement, issued April 26, 2011, individually and as designated officer-broker of ASFC. As said designated officer-broker, GUTIERREZ was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of ASFC, for which a license is required.

At all times herein mentioned Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others, for compensation or in expectation of compensation within the State of California within the meaning of Sections:

(a) 10131(a) of the Code, including the operation and conduct of a real estate brokerage with the public wherein Respondents sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity; and,

(b) 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage with the public wherein Respondents solicited lenders or borrowers for or negotiated loans or loan modifications or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

In so acting as real estate brokers, Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of buyers, sellers, lenders, investors, borrowers and others in connection with the resale and mortgage loan brokerage activities described in Paragraph 4, above, and thereafter from time to time made disbursements of said trust funds.

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into a bank account (herein "Trust 1") maintained by Respondents for the handling of trust funds at the Modesto, California, branch of Bank of America, entitled "John Saenz Gutierrez American Security Financial Trust Account," account number xxxxx-x6662

FIRST CAUSE OF ACCUSATION – AUDIT

The allegations of Paragraphs 1 through 6 are incorporated herein by reference.

Between about June 1, 2009 and June 1, 2011, in connection with the activities described in Paragraphs 4 through 6, above, Respondent ASFC:

(a) caused, suffered or permitted the balance of funds in Trust #1 to be reduced to an amount less than the liability of ASFC, resulting in a trust fund shortage on about May 20, 2011, of about \$1,078.92, prior to obtaining the written consent of every principal who is an owner of the funds, in violation of Section 10145 of the Code and Section 2832.1, Chapter 6, Title 10, of the California Code of Regulations (the Regulations);

(b) failed to place trust funds entrusted to Respondents into the hands of a principal on whose behalf the funds were received, into a neutral escrow depository, or into a trust fund account in the name of Respondents as trustee at a bank or other financial institution, in conformance with the requirements of Section 10145 of the Code and Section 2832 of the Regulations;

1 (c) failed to keep a columnar record in chronological sequence of all pass
2 through trust funds not deposited into a trust account containing all of the information required
3 by Section 2831(a)(6) of the Regulations;

4 (d) failed to reconcile at least once a month, the balance of all separate beneficiary
5 or transaction records with Trust #1, as required by Section 2831.2 of the Regulations; and,

6 (e) failed to obtain a real estate license bearing the fictitious business name
7 "John Saenz Gutierrez American Security Financial" while conducting activities for which a
8 license was required under said fictitious business name, in violation of Section 10159.5 of the
9 Code and Section 2731 of the Regulations.

10 SECOND CAUSE OF ACCUSATION – MULTI-LENDER LOAN

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12 The allegations of Paragraphs 1 through 8 are incorporated herein by reference.

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14 On about October 13, 2009, a 59-month Note Secured by a Deed of Trust and
15 Assignment of Note Secured by a Deed of Trust (herein "the Note") was entered into between
16 Respondent ASFC, as lender, and Arturo C. (herein "Arturo"), as borrower, in the amount of
17 about \$98,000.00, secured by a single family unit located on 5th St., Delhi, CA 95315 (herein
18 the "5th St. Property"), at a 12 per cent fixed rate of interest with a balloon payment of about
19 \$98,980.00, due on November 1, 2014, assigned to John and Judy W. (herein "JJW"), Kevin K.
20 (herein "Kevin") and Kim K. (herein "Kim").

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22 On about October 21, 2009, a Deed of Trust for the Note on the 5th St. Property
23 was recorded showing Arturo as Trustor and Respondent ASFC as Beneficiary and an
24 Assignment of the Deed of Trust reflecting investors JJW, Kevin and Kim.

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26 On about March 22, 2010, Respondents provided a Lender Purchaser Disclosure
27 Statement (herein "LPDS") and entered into a Loan Servicing Agreement (herein "Servicing

1 Agreement”) with investors JJW for the Note described in Paragraph 9, above, wherein
2 Respondents agreed to “employ commercially reasonable and prudent practices to collect all
3 scheduled payments on the Loan; issue payment coupons or payoff demands, beneficiary
4 statements and mortgage ratings; demand, receive and collect all Loan payments; and promptly
5 communicate to Lender any material information about collection of the Loan and the Source of
6 non-borrower payments.”

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8 In connection with the mortgage loan activities described in Paragraphs 9 through
9 12, above, Respondent:

10 (a) ASFC, in violation of Section 10238(a) of the Code, failed to notify the
11 Commissioner within 30 days of the sale of a multi-lender loan;

12 (b) GUTIERREZ, in violation of Section 10177(o) of the Code, failed to
13 disclose his familial relationship with borrower Arturo, in that Arturo is GUTIERREZ’ nephew;

14 (c) ASFC, in violation of Sections 10232.4 and 10238(l) of the Code, failed to
15 deliver a LPDS prior to the investors’ obligation to make the loan;

16 (d) ASFC, in violation of Section 10238(h)(4)(E) of the Code, failed to obtain
17 an appraisal or appraisal waiver for the security property;

18 (e) ASFC, in violation of Section 10233 of the Code, failed to enter into
19 Servicing Agreements with investors prior to servicing the Note;

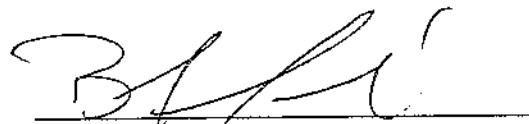
20 (f) ASFC, in violation of Sections 10238(k)(2) and 10233.1 of the Code, failed
21 to notify investors within 10 days that broker’s own funds were being applied toward the Note;

22 (g) ASFC, in violation of Section 10177(g) of the Code, failed to collect all loan
23 payments due through December 31, 2010; and,

24 (h) GUTIERREZ, in violation of Section 2742(c) of the Regulations, willfully
25 caused, suffered and permitted ASFC to perform licensed activities during the time that ASFC
26 was not in good standing with the office of the Secretary of State, in that the California Franchise
27 Tax Board suspended ASFC’s powers, rights and privileges on December 1, 2010.

- 1 (g) as to Paragraph 13(b) and Respondent GUTIERREZ, under Section
2 10177(o) of the Code;
- 3 (h) as to Paragraph 13(c) and Respondent ASFC, under Sections 10232.4 and
4 10238(l) of the Code in conjunction with Section 10177(d) of the Code;
- 5 (i) as to Paragraph 13(d) and Respondent ASFC, under Section 10238(h)(4)(E)
6 of the Code in conjunction with Section 10177(d) of the Code;
- 7 (j) as to Paragraph 13(e) and Respondent ASFC, under Section 10233 of the
8 Code in conjunction with Section 10177(d) of the Code;
- 9 (k) as to Paragraph 13(f) and Respondent ASFC, under Sections 10238(k)(2)
10 and 10233.1 of the Code in conjunction with Section 10177(d) of the Code;
- 11 (l) as to Paragraph 13(g) and Respondent ASFC, under Section 10177(g) of the
12 Code;
- 13 (m) as to Paragraph 13(h) and Respondent GUTIERREZ, under Section 2742(c)
14 of the Regulations in conjunction with Section 10177(d) of the Code; and,
- 15 (n) as to Paragraph 15 and Respondent GUTIERREZ, under Sections 10177(h)
16 and (g) and 10159.2 of the Code in conjunction with Section 10177(d) of the
17 Code.

18 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
19 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
20 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of
21 Division 4 of the Business and Professions Code), for the cost of the investigation and
22 enforcement as permitted by law, and for such other and further relief as may be proper under
23 other applicable provisions of law.

24 
25 BRENDÁ SMITH
26 Deputy Real Estate Commissioner

27 Dated at Fresno, California
this 13 day of July, 2012.