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FILED

MAY 12 2022

DEPARTMENT OF REAL ESTATE
By B. A. Chulas

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of

13 MICHAEL DENNIS BARWICK,

14 Respondent.

No. H-3375 FR

FIRST AMENDED
ACCUSATION

15 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
16 State of California, for cause of Accusation against MICHAEL DENNIS BARWICK,
17 ("Respondent"), are informed and alleges as follows:

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19 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
20 State of California, makes this Accusation in her official capacity.

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22 Respondent is presently licensed and/or has license rights under the Real Estate
23 Law, Part 1 of Division 4 of the Business and Professions Code ("Code").

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25 At all times mentioned, Respondent was and is licensed by the Department as a
26 real estate broker.

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At no time mentioned has Respondent been issued a mortgage loan originator endorsement by the Department.

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At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker and/or mortgage loan originator in the State of California within the meaning of:

Section 10131(a) of the Code, in that Respondents performed licensed activities in the State of California for or in expectation of compensation, including sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or exchange of real property or a business opportunity;

Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein, for or in expectation of compensation, for another or others, solicited borrowers or lenders or negotiated loans 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; and

Section 10166.01 (b) of the Code, including taking residential mortgage loan applications or offering or negotiating terms of a residential mortgage loan for compensation or gain.

FIRST CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 5, inclusive, is incorporated by this reference as if fully set forth herein.

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Respondent, engaged in the business as a mortgage loan originator as that term is defined by Section 10166.01(b)(1) of the Code, which includes but is not limited to the conduct

1 of mortgage loan brokerage activities, and failed to obtain and maintain a real estate license
2 endorsement identifying that Respondent is a licensed mortgage loan originator, in violation of
3 Section 10166.02(b) of the Code, including but not limited to the following:

<u>DATE</u>	<u>BORROWER</u>	<u>PROPERTY</u>
April 2019	Elizabeth M.	1549 Ellis Lane, Manteca

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8 The facts alleged in the First Cause of Action are grounds for the suspension or
9 revocation of the licenses of Respondent under Sections 10166.051 and 10177(d) of the Code in
10 conjunction with Section 10166.02(b)(2) of the Code.

11 SECOND CAUSE OF ACTION

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13 Each and every allegation in Paragraphs 1 through 8, inclusive, is incorporated by this
14 reference as if fully set forth herein.

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16 In connection with the operation and conduct of the real estate activities described
17 in Paragraph 5, Respondent engaged in the business of claiming, demanding, charging, receiving,
18 collecting or contracting for the collection of advance fees within the meaning of Sections 10026
19 and 10131.2 of the Code including but not limited to the following:

<u>PROPERTY OWNER</u>	<u>DATE</u>	<u>ADVANCE FEE</u>
Elizabeth M.	July 5, 2019	\$3,000

22 11

23 In connection with the collection and handling of said advance fee, Respondent
24 failed to cause the advance fee contract and all materials used in obtaining the advance fee
25 agreement to be submitted to the Department of Real Estate prior to use as required by Section
26 10085 of the Code and Section 2970 of Title 10, Chapter 6, California Code of Regulations
27 (Regulations).

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The acts and/or omissions of Respondent described in the Second Cause of Action, constitute violation of Section 10177(d) of the Code in conjunction with Sections 10085, and 10085.5 of the Code and Section 2970 of the Regulations, and are cause for the suspension or revocation of Respondent's license and license rights.

THIRD CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 12, inclusive, is incorporated by this reference as if fully set forth herein.

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In connection with the operation and conduct of the real estate sales activities described in Paragraph 5, Respondent failed to maintain a record of the action(s) taken to effect compliance with Section 2905 of the regulations, record of the pest control documentation delivery, including but not limited to the following transactions:

<u>SELLER</u>	<u>PROPERTY</u>
The Carolyn J. Fisher Family Trust	448 Comanche Way, Salinas
Gerald Wallace & Cheri Wallace	7020 Valley Greens Drive #16, Carmel

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The acts and/or omissions of Respondent described in the Third Cause of Action, constitute violation of Section 10177(d) of the Code in conjunction with Section 2905 of the Regulations, and are cause for the suspension or revocation of Respondent's license and license rights.

FOURTH CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 16, inclusive, is incorporated by this reference as if fully set forth herein.

On or about March 9, 2022, in the Superior Court of the State of California, County of Monterey, Case No. 21 CR004080, Respondent was convicted of a violation of Section 2944.7 (unlawful compensation for mortgage loan activities) of the California Civil Code, a crime which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

The facts identified in the Fourth Cause of Action, constitute cause under Sections 490 and 10177(b) of the Code, for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

COST RECOVERY

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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 all licenses and license rights of Respondent under the Code, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under the provisions of law.


BRENDA SMITH
Supervising Special Investigator

Dated at Fresno, California,
this 6 day of May, 2022

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