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FILED

MAY 25 2010

DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	NO. H-4113 SD
RED HOT REALTY & MORTGAGE CORP, a	)	
California corporation, ANNE RUTH HAAS,	)	<u>ACCUSATION</u>
and RANDY LEE VAN ORDEN,	)	
	)	
Respondents.	)	

The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the State of California, for Causes of Accusation against RED HOT MORTGAGE & REALTY CORP, a California corporation, ANNE RUTH HAAS, and RANDY LEE VAN ORDEN, is informed and alleges as follows:

I

Respondent RED HOT REALTY & MORTGAGE CORP (hereinafter "Respondent RHRM"), Respondent ANNE RUTH HAAS (hereinafter "Respondent HAAS"), and Respondent RANDY LEE VAN ORDEN (hereinafter "Respondent VAN ORDEN") are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "the Code").

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2 The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the
3 State of California, makes this Accusation against Respondents in his official capacity.

4 3
5 At all times herein mentioned, Respondent RHRM was and is licensed by the
6 Department of Real Estate (hereinafter "the Department") as a corporate real estate broker.

7 4
8 At all times herein mentioned, Respondent HAAS was and is licensed by the
9 Department as an individual real estate broker.

10 5
11 At all times herein mentioned, Respondent HAAS was and is licensed by the
12 Department as the designated broker/officer of Respondent RHRM. As said designated
13 broker/officer, Respondent HAAS was at all times mentioned herein responsible pursuant to
14 Sections 10159.2 and 10177(h) of the Code for the supervision of the activities of the officers,
15 agents, real estate licensees and employees of Respondent RHRM for which a real estate license
16 is required.

17 6
18 At all times herein mentioned, Respondent VAN ORDEN was and is licensed by
19 the Department as an individual real estate salesperson. At no time has the Department licensed
20 Respondent VAN ORDEN as a real estate broker.

21 7
22 At no time herein mentioned, from January 4, 2006, and at all times thereafter,
23 was Respondent VAN ORDEN licensed by the Department as a real estate salesperson in the
24 employ of Respondent RHRM or Respondent HAAS.

25 8
26 Whenever reference is made in an allegation in this Accusation to an act or
27 omission of Respondent RHRM, such allegation shall be deemed to mean that the officers,

1 directors, employees, agents and real estate licensees employed by or associated with
2 Respondent RHRM committed such act or omission while engaged in the furtherance of the
3 business or operations of Respondent RHRM and while acting within the course and scope of
4 their corporate authority and employment.

5 9

6 At all times herein mentioned, Respondent HAAS is and was the chief executive
7 officer, agent for service of process, and principal stockholder of Respondent RHRM, and,
8 therefore, Respondent RHRM was and is the alter ego of Respondent HAAS, and whenever a
9 reference is made to an act, omission or representation of Respondent RHRM, such allegation
10 shall be deemed to mean that Respondent HAAS was so acting, failing to act, and/or speaking.

11 10

12 At all times herein mentioned, Respondents engaged in the business of, acted in
13 the capacity of, advertised, or assumed to act as real estate brokers within the meaning of
14 Section 10131(d) of the Code, soliciting borrowers or lenders for or negotiating loans or
15 collecting payments or performing services for borrowers or lenders or note owners in
16 connection with loans secured directly or collaterally by liens on real property or on a business
17 opportunity.

18 FIRST CAUSE OF ACTION

19 11

20 There is hereby incorporated in this First, separate and distinct, Cause of Action,
21 all of the allegations contained in Paragraphs 1 through 10, inclusive, of the Accusation with the
22 same force and effect as if herein fully set forth.

23 12

24 Within the three year period prior to the filing of this Accusation, Respondent
25 RHRM, Respondent HAAS, and Respondent VAN ORDEN, in the course and scope of
26 conducting the activities set forth in Paragraph 10, above, induced Washington Mutual Bank
27 (predecessor in interest to J. P. Morgan Chase Bank) (hereinafter "Lender") to make a loan in

1 the sum of \$675,000.00 to be secured by real property at 30478 Palomar Vista Drive, Valley
2 Center, California (hereinafter "subject property"), to finance the ostensible purchase of the
3 subject property by Edna Grace Cotton (hereinafter "Borrower") by representing to the Lender,
4 contrary to fact, as Respondents RHRM, HAAS and VAN ORDEN knew or should have known
5 at the time through the exercise of reasonable diligence, that: Borrower would reside in the
6 subject property as her primary residence; Borrower was self-employed for 10 years as the
7 owner of E. G. Consulting; Borrower's gross monthly income was \$14,100.00; Borrower had
8 personal assets worth \$45,000.00; Borrower owned a 2006 Buick valued at \$17,000.00;
9 Borrower's mailing address was P. O. Box 2622, Valley Center, California, 92082; and, that
10 Borrower's business telephone number was (760)-580-7324.

11 13

12 In truth and in fact, as Respondents RHRM, HAAS, and VAN ORDEN knew or
13 should have known at the time through the exercise of reasonable diligence, that: Borrower
14 would not and did not reside in the subject property; Borrower was not self employed or
15 employed in any capacity; Borrower was suffering from Alzheimer's disease and lived with and
16 was cared for at the residence of her daughter; Borrower did not have gross monthly income of
17 \$14,100.00; Borrower's taxable income for 2007 was \$59,129.00 or gross monthly income of
18 \$4,927.42; Borrower had personal assets worth no more than \$4,000.00; Borrower did not own
19 a 2006 Buick; Borrower owned a 2000 Honda; Borrower did not have a mailing address at P. O.
20 Box 2622, Valley Center, California, 92082; the address of P. O. Box 2622, Valley Center,
21 California, 92082, was the mailing address of Respondent VAN ORDEN; Borrower did not
22 have a telephone number of (760)-580-7324; and, the telephone number of (760)-580-7324 was
23 the cellular telephone number of Respondent VAN ORDEN.

24 14

25 The acts and/or omissions of Respondents RHRM, HAAS and VAN ORDEN
26 described in Paragraphs 12 and 13, above, constituted substantial misrepresentations, fraud,
27 deceit, and dishonest dealing.

The acts and/or omissions of Respondents RHRM, HAAS and VAN ORDEN as alleged in Paragraphs 12, 13 and 14, above, constitute grounds for the revocation or suspension of Respondents' licenses and/or license rights under Section 10176(a) of the Code [making any substantial misrepresentation], Section 10176(i) of the Code [engaged in any other conduct, while acting in a licensed capacity whether of the same or different character than specified in this section, constituting fraud or dishonest dealing], Section 10177(g) [demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license] and/or Section 10177(j) of the Code [engaged in any other conduct, whether of the same or different character than specified in this section, constituting fraud or dishonest dealing].

SECOND CAUSE OF ACTION

There is hereby incorporated in this Second, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 15, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

Within the three year period prior to the filing of this Accusation, Respondent RHRM and Respondent HAAS induced Lender to make the loan set forth in Paragraph 12, above, by submitting to said lender a final "UNIFORM RESIDENTIAL LOAN APPLICATION" (hereinafter "Application") representing to the lender contrary to fact, as Respondents RHRM and HAAS knew or should have known at the time through the exercise of reasonable diligence, as follows:

(a) The Application provided, in pertinent part, the following language:

"The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are

1 encouraged to do so. The law provides that a lender may not discriminate
2 either on the basis of this information, or on whether you choose to furnish
3 it. If you furnish the information, please provide both ethnicity and race.
4 For race, you may check more than one designation. If you do not furnish
5 ethnicity, race, or sex, under Federal regulations, this lender is required to
6 note the information on the basis of visual observation or surname. If you
7 do not wish to furnish the information, please check the box below. (Lender
8 must review the above material to assure that the disclosures satisfy all
9 requirements to which the lender is subject under applicable state law for
10 the particular type of loan applied for.);”

- 11 (b) The race, ethnicity, and sex information as set forth on the Application was
12 obtained by Respondent HAAS, who signed the Application as the
13 “Interviewer” and checked information to “be Completed by Interviewer”
14 indicating the “application was taken by . . . Face-to-face interview;” and,
15 (c) That the loan application was signed by the Borrower, Edna Grace Cotton.

16 18

17 In truth and in fact, Respondent HAAS had not interviewed Borrower in a face-
18 to-face interview, Respondent HAAS had not obtained the requested ethnicity, race, and sex
19 information from said Borrower, Respondent HAAS had never met the Borrower, Edna Grace
20 Cotton, said Borrower had not signed the Application in the presence of Respondent HAAS.

21 19

22 The acts and/or omissions of Respondents RHRM and HAAS described in
23 Paragraphs 17 and 18, above, constituted substantial misrepresentations, fraud, deceit, and
24 dishonest dealing.

25 20

26 The acts and/or omissions of Respondents RHRM and HAAS as alleged in
27 Paragraphs 17, 18 and 19, above, constitute grounds for the revocation or suspension of

1 Respondents' licenses and/or license rights under Section 10176(a) of the Code [making any
2 substantial misrepresentation], Section 10176(i) of the Code [engaged in any other conduct,
3 while acting in a licensed capacity whether of the same or different character than specified in
4 this section, constituting fraud or dishonest dealing], Section 10177(g) [demonstrated
5 negligence or incompetence in performing an act for which he or she is required to hold a
6 license] and/or Section 10177(j) of the Code [engaged in any other conduct, whether of the same
7 or different character than specified in this section, constituting fraud or dishonest dealing].

8 THIRD CAUSE OF ACTION

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10 There is hereby incorporated in this Third, separate and distinct, Cause of Action,
11 all of the allegations contained in Paragraphs 1 through 20, inclusive, of the Accusation with the
12 same force and effect as if herein fully set forth.

13 22

14 At all times herein mentioned, Respondent VAN ORDEN was duly licensed as a
15 real estate salesperson in the employ of licensed real estate broker Peter Nelson Andrews from
16 May 3, 2006 through November 19, 2007. At no time herein mentioned since January 4, 2006
17 was Respondent VAN ORDEN licensed in the employ of Respondent RHRM. Respondent
18 VAN ORDEN was never licensed in the employ of Respondent HAAS as an individual real
19 estate broker licensee at any time.

20 23

21 Within three years prior to the filing of this Accusation, in the course and scope
22 of the activities set forth in Paragraphs 10 and 12, above, Respondent VAN ORDEN solicited
23 and negotiated with Borrower for the purchase loan described in Paragraph 12.

24 24

25 Within three years prior to the filing of this Accusation, on or about July 26,
26 2007, Respondent HAAS and Respondent RHRM compensated Respondent VAN ORDEN in
27 the amount of \$3,600.00 by check made payable directly to Respondent VAN ORDEN, who

1 accepted such compensation, for soliciting and negotiating with Borrower for the loan set forth
2 in Paragraph 23, above.

3 25

4 The acts of Respondents RHRM and HAAS as set forth in Paragraph 24, above,
5 violated Section 10137 of the Code [Unlawful for real estate broker to employ or compensate
6 any person for performing any acts requiring a real estate license who is not a salesperson
7 licensee licensed under said broker or who is not a licensed broker.].

8 26

9 The acts of Respondent VAN ORDEN as set forth in Paragraph 24, above,
10 violated Section 10137 of the Code [Unlawful for real estate salesperson to accept
11 compensation from any person other than the broker under whom he is at the time licensed.].

12 27

13 The facts alleged in Paragraphs 22 through 26, inclusive, above, are grounds for
14 the suspension or revocation of the licenses or license rights of Respondents HAAS, RHRM and
15 VAN ORDEN under Section 10137 of the Code in conjunction with Section 10177(d) of the
16 Code [providing for revocation or suspension of a real estate license for violations of the Real
17 Estate Law under Sections 10000 et seq. and Sections 11000 et seq. of the Code or for
18 violations of the Commissioner's Regulations, Chapter 6, Title 10, California Code of
19 Regulations].

20 FOURTH CAUSE OF ACTION

21 28

22 There is hereby incorporated in this Fourth, separate and distinct, Cause of
23 Action, all of the allegations contained in Paragraphs 1 through 27, inclusive, of the Accusation
24 with the same force and effect as if herein fully set forth.

25 29

26 Within three years prior to the filing of this Accusation, Respondent VAN
27 ORDEN engaged in the business of, acted in the capacity of, advertised, or assumed to act as a

1 real estate broker within the meaning of Section 10131(b) of the Code, including the operation
2 of a property management business with the public wherein, on behalf of others, for
3 compensation or in expectation of compensation, Respondent leased or rented and offered to
4 lease or rent and placed for rent, and solicited listings of places for rent, and solicited listings of
5 places for rent, and solicited for prospective tenants of real property or improvements thereon,
6 and collected rents from real property or improvements thereon.

7 30

8 At all times herein mentioned, Respondent VAN ORDEN was duly licensed as a
9 real estate salesperson in the employ of licensed real estate broker Peter Nelson Andrews from
10 December 18, 2007 through March 16, 2009.

11 31

12 On or about July 20, 2007, escrow for the purchase of the subject property by the
13 Borrower closed and title to the subject property was recorded in favor of the Borrower as the
14 sole owner.

15 32

16 Within three years prior to the filing of this Accusation, beginning on or about
17 April 1, 2008, Respondent VAN ORDEN, without the knowledge and consent of his employing
18 broker, solicited for and negotiated a lease to rent the subject property to a tenant identified as
19 Heather Forster for \$2,750.00 per month.

20 33

21 Within three years prior to the filing of this Accusation, beginning on or about
22 April 1, 2008, and continuing until on or about May 1, 2009, without the knowledge and
23 consent of his employing broker, Respondent VAN ORDEN collected the monthly rent payment
24 of \$2,275.00 per month from the tenant. At all times herein mentioned rent proceeds generated
25 by the leasing of the subject property were funds rightfully belonging to the property owner,
26 Edna Grace Cotton.

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In so acting as a real estate broker as described in Paragraphs 32 and 33, above, Respondent VAN ORDEN accepted or received rent funds in trust (hereinafter "trust funds") from or on behalf of owners, tenants and/or others in connection with the property management activities.

Within the three year period prior to the filing of this Accusation, in connection with the collection of trust funds, Respondent VAN ORDEN failed to immediately deliver the funds to the broker under whom he was at the time licensed for deposit to and/or failed to maintain the trust funds in his broker's trust account or neutral escrow depository, or to deliver said funds into the hands of the owner of the funds, as required by Section 10145 of the Code [Real estate salesperson accepting funds belonging to others shall immediately deliver those funds to the broker under whom he is licensed, or if so directed by the broker, shall deliver the funds into the custody of the broker's principal, a neutral escrow depository, or the broker's trust account.]

Respondent VAN ORDEN commingled trust funds with Respondent's own money or property and converted said trust funds to Respondent's own use or benefit or to purposes not authorized by the rightful owner of said funds.

The facts alleged in Paragraphs 29 through 36, inclusive, above, are grounds for the suspension or revocation of the licenses or license rights of Respondent VAN ORDEN under:

- a. Section 10130 of the Code [Unlawful to engage in the business of, act in the capacity of, advertise or assume to as a real estate broker without obtaining a real estate broker license] in conjunction with Section 10177(d) of the Code [providing for revocation or suspension of a real

1 estate license for violations of the Real Estate Law under Sections 10000
2 et seq. and Sections 11000 et seq. of the Code or for violations of the
3 Commissioner's Regulations, Chapter 6, Title 10, California Code of
4 Regulations]

- 5 b. Section 10145 of the Code in conjunction with Section 10177(d) of the
6 Code;
7 c. Section 10176(e) of the Code [Commingling with his or her own money or
8 property the money or property of others held by him or her];
9 d. Section 10176(i) and/or Section 10177(j) of the Code [engaged in any
10 other conduct, while acting in a licensed capacity whether of the same or
11 different character than specified in this section, constituting fraud or
12 dishonest dealing]; and/or,
13 e. Section 10177(g) of the Code [demonstrated negligence or incompetence
14 in performing an act for which he or she is required to hold a license].

15 FIFTH CAUSE OF ACTION

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17 There is hereby incorporated in this Fifth, separate and distinct, Cause of Action,
18 all of the allegations contained in Paragraphs 1 through 37, inclusive, of the Accusation with the
19 same force and effect as if herein fully set forth.

20 39

21 At all times herein mentioned, Respondent HAAS was responsible, as the
22 designated broker officer of Respondent RHRM, for the supervision and control of the activities
23 conducted on behalf of the corporation by its officers and employees. Respondent HAAS failed
24 to exercise reasonable supervision and control over the mortgage brokering activities of
25 Respondent RHRM. In particular, Respondent HAAS permitted, ratified and/or caused the
26 conduct described in the First, Second, and Third Causes of Action, above, to occur, and failed
27 to take reasonable steps, including, but not limited to the review of loan applications and

1 transactional documents, actual interviewing of borrowers, supervision of employees and
2 officers, proper employment of licensed salespersons, and the implementation of policies, rules,
3 procedures, and systems to ensure the compliance of the corporation with the Real Estate Law.

4 53

5 The above acts and/or omissions of Respondent HAAS constitute grounds for the
6 revocation or suspension of Respondent HAAS' licenses and/or license rights under the
7 provisions of Section 10177(h) of the Code [requiring designated broker/officer to exercise
8 reasonable supervision over the licensed activities of corporate broker] and/or Section 10159.2
9 of the Code [holding designated broker/officer responsible for supervision and control of
10 activities conducted on behalf of corporation by its officers and licensees for compliance with
11 the Real Estate Law under Sections 10000 et seq. of the Code] and Section 2725 of Chapter 6,
12 Title 10, California Code of Regulations (hereinafter "Regulations") [requiring broker to
13 supervise salesperson employees and to implement policies, rules and procedures to assure
14 employee compliance with the Real Estate Law under Sections 10000 et seq. of the Code] in
15 conjunction with Section 10177(d) of the Code [providing for revocation or suspension of a real
16 estate license for violations of the Real Estate Law under Sections 10000 et seq. of the Code or
17 for violations of the Commissioner's Regulations].

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

23
24 
25 JOSEPH AIU
Deputy Commissioner

26 Dated at San Diego, California

27 this 20 day of May, 2010