

**FILED**

JAN 27 2012

Department of Real Estate  
BY                     

1 DEPARTMENT OF REAL ESTATE

2 P. O. Box 187000

3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

5  
6  
7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

) No. H-4214 SD

12 )  
13 FIRST FINANCIAL & REAL ESTATE )  
14 SERVICES, INC., a California corporation, and )  
15 MASUD AKBAR SARWARY, )

) Respondents. )

STIPULATION AND AGREEMENT

16  
17 It is hereby stipulated by and between Respondent FIRST FINANCIAL & REAL  
18 ESTATE SERVICES, INC., and Respondent MASUD AKBAR SARWARY (hereinafter  
19 "Respondents"), acting by and through their attorney of record, Joel Lee Incorvaia, and the  
20 Complainant, acting by and through Michael B. Rich, Counsel for the Department of Real  
21 Estate, as follows for the purpose of settling and disposing of the Accusations filed on  
22 July 7, 2011, in this matter (hereinafter "the Accusation"):

23 1. All issues which were to be contested and all evidence which was to be  
24 presented by Complainant and Respondents at a formal hearing on the Accusation, which  
25 hearing was to be held in accordance with the provisions of the Administrative Procedure Act  
26 (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of  
27 this Stipulation and Agreement.

H-4214 SD

FIRST FINANCIAL & REAL ESTATE SERVICES,  
INC., MASUD AKBAR SARWARY

1                   2.    Respondents have received, read and understand the Statement to  
2 Respondent, the Discovery Provisions of the APA and the Accusations filed by the Department  
3 of Real Estate in this proceeding.

4                   3.    On July 19, 2011, Respondents filed a Notice of Defense pursuant to  
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the  
6 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notices  
7 of Defense. Respondents acknowledge that Respondents understand that by withdrawing said  
8 Notice of Defense Respondents will thereby waive Respondents' right to require the  
9 Commissioner to prove the allegations in the Accusation at a contested hearing held in  
10 accordance with the provisions of the APA and that Respondents will waive other rights  
11 afforded to Respondents in connection with the hearing such as the right to present evidence in  
12 defense of the allegations in the Accusation and the right to cross-examine witnesses.

13                   4.    Respondents, pursuant to the limitations set forth below, hereby admit that  
14 the factual allegations in the Accusation pertaining to Respondents are true and correct and  
15 stipulate and agree that the Real Estate Commissioner shall not be required to provide further  
16 evidence of such allegations.

17                   5.    It is understood by the parties that the Real Estate Commissioner may adopt  
18 the Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and  
19 sanctions on Respondents' respective real estate licenses and license rights as set forth in the  
20 "Order" below. In the event that the Commissioner in his discretion does not adopt the  
21 Stipulation and Agreement, it shall be void and of no effect, and Respondents shall retain the  
22 right to a hearing and proceeding on the Accusation under all the provisions of the APA and  
23 shall not be bound by any admission or waiver made herein.

24                   6.    This Stipulation and Agreement shall not constitute an estoppel, merger or  
25 bar to any further administrative or civil proceedings by the Department of Real Estate with  
26 respect to any matters which were not specifically alleged to be causes for accusation in this  
27 proceeding.

7. Respondents understand that by agreeing to this Stipulation and Agreement in Settlement, Respondents agree to pay, pursuant to Section 10148 of the Business and Professions Code (hereinafter "the Code"), the cost of the audit that led to this disciplinary action. The amount of said costs for FIRST FINANCIAL & REAL ESTATE SERVICES, INC., and Respondent MASUD AKBAR SARWARY is \$5,545.50.

8. Respondents have received, read, and understand the "Notice Concerning Costs of Audits". Respondents further understand that by agreeing to this Stipulation and Agreement in Settlement, the findings set forth below in the DETERMINATION OF ISSUES become final, and that the Commissioner may charge Respondents for the costs of any subsequent audit conducted pursuant to Section 10148 of the Code to determine if the violations have been corrected. The maximum costs of said audit for FIRST FINANCIAL & REAL ESTATE SERVICES, INC., and Respondent MASUD AKBAR SARWARY would not exceed \$5,545.50.

## DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the following Determination of Issues shall be made:

# I

The acts and omissions of Respondent FIRST FINANCIAL & REAL ESTATE SERVICES, INC., as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent under the provisions of: Sections 10145, 10146, 10148, 10240, and 10241 of the Code, Sections 2831, 2831.1, 2831.2, 2832.1, and 2972 of Chapter 6, Title 10, California Code of Regulations (hereinafter "Regulations"), all in conjunction with 10177(d) of the Code.

## II

The acts and omissions of Respondent MASUD AKBAR SARWARY as described in the Accusation are grounds for the suspension or revocation of the licenses and

1 license rights of Respondent under the provisions of Sections and 10159.2(a) of the Code and  
2 Section 2725 of the Regulations in conjunction with 10177(d) of the Code and under the  
3 provisions of Section 10177(h) of the Code.

4 ORDER

5 I

6 The corporate real estate broker licenses and all license rights of Respondent  
7 FIRST FINANCIAL & REAL ESTATE SERVICES, INC., under the Real Estate Law is  
8 revoked; provided, however, a restricted corporate real estate broker license shall be issued to  
9 Respondent FIRST FINANCIAL & REAL ESTATE SERVICES, INC., pursuant to Section  
10 10156.5 of the Code if Respondent makes application therefor and pays to the Department of  
11 Real Estate the appropriate fee for the restricted license within ninety (90) days from the  
12 effective date of this Decision. The restricted license issued to Respondent FIRST  
13 FINANCIAL & REAL ESTATE SERVICES, INC., shall be subject to all of the provisions of  
14 Section 10156.7 of the Business and Professions Code and to the following limitations,  
15 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

16 1. The restricted license issued to Respondent FIRST FINANCIAL & REAL  
17 ESTATE SERVICES, INC., may be suspended prior to hearing by Order of the Real Estate  
18 Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime  
19 which is substantially related to Respondent's fitness or capacity as a real estate licensee.

20 2. The restricted license issued to Respondent FIRST FINANCIAL & REAL  
21 ESTATE SERVICES, INC., may be suspended prior to hearing by Order of the Real Estate  
22 Commissioner on evidence satisfactory to the Commissioner that Respondent has violated  
23 provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the  
24 Real Estate Commissioner or conditions attaching to the restricted license.

25 3. Respondent FIRST FINANCIAL & REAL ESTATE SERVICES, INC.,  
26 shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the  
27

removal of any of the conditions, limitations, or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

4. Pursuant to Section 10148 of the Business and Professions Code,

Respondent FIRST FINANCIAL & REAL ESTATE SERVICES, INC., shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondent has corrected the trust fund violations found in paragraph I of the Determination of Issues not to exceed \$5,545.50. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall, jointly and severally with Respondent MASUD AKBAR SARWARY, pay such cost within sixty (60) days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to Respondent FIRST FINANCIAL & REAL ESTATE SERVICES, INC., pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

5. Any restricted real estate broker license issued to Respondent FIRST  
FINANCIAL & REAL ESTATE SERVICES, INC., may be suspended or revoked for a  
violation by Respondent of any of the conditions attaching to the restricted license.

## II

The real estate broker license and all license rights of Respondent MASUD  
AKBAR SARWARY under the Real Estate Law are revoked; provided, however, a restricted  
real estate broker license shall be issued to Respondent MASUD AKBAR SARWARY pursuant

1 to Section 10156.5 of the Business and Professions Code if Respondent makes application  
2 therefor and pays to the Department of Real Estate the appropriate fee for the restricted license  
3 within ninety (90) days from the effective date of this Decision. The restricted license issued to  
4 Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and  
5 Professions Code and to the following limitations, conditions and restrictions imposed under  
6 authority of Section 10156.6 of that Code:

7 1. The restricted license issued to Respondent MASUD AKBAR SARWARY  
8 is suspended for a period of sixty (60) days from the effective date of the Decision herein,  
9 however, provided:

10 A. If Respondent petitions, thirty (30) days of the sixty (60) day suspension  
11 shall be stayed upon the condition that:

12 (1) Respondent pays a monetary penalty pursuant to Section 10175.2  
13 of the Code of \$3,000.00 or \$100.00 per day.

14 (2) Said payment shall be in the form of a cashier's check or certified  
15 check made payable to the Recovery Account of the Real Estate  
16 Fund. Said check must be received by the Department prior to the  
17 effective date of the Decision in this matter.

18 (3) If Respondent fails to pay the monetary penalty in accordance  
19 with the terms and conditions of the Decision, the Commissioner  
20 may, without a hearing, vacate and set aside the stay order, and  
21 order the immediate execution of all or any part of the stayed  
22 suspension.

23 (4) No final subsequent determination be made, after hearing or upon  
24 stipulation, that cause for disciplinary action against Respondent  
25 MASUD AKBAR SARWARY occurred within three (3) years of  
26 the effective date of the Decision herein. Should such a  
27 determination be made, the Commissioner may, in his or her

1 discretion, vacate and set aside the stay order, and order the  
2 execution of all or any part of the stayed suspension, in which  
3 event the Respondent shall not be entitled to any repayment nor  
4 credit, prorated or otherwise, for money paid to the Department  
5 under the terms of this Decision.

6 (5) If Respondent pays the monetary penalty and if no further cause  
7 for disciplinary action against the real estate license of  
8 Respondent occurs within three (3) years from the effective date  
9 of the Decision herein, then the stay hereby granted shall become  
10 permanent.

11 B. Thirty (30) days of said sixty (60) day suspension shall be stayed upon  
12 condition that:

13 (1) No final subsequent determination be made, after hearing or upon  
14 stipulation, that cause for disciplinary action against Respondent  
15 MASUD AKBAR SARWARY occurred within three (3) years of  
16 the effective date of the Decision herein.

17 (2) Should such a determination be made, the Commissioner may, in  
18 his or her discretion, vacate and set aside the stay order, and order  
19 the execution of all or any part of the stayed suspension, in which  
20 event the Respondent shall not be entitled to any repayment nor  
21 credit, prorated or otherwise, for money paid to the Department  
22 under the terms of this Decision.

23 (3) If no order vacating the stay is issued, and if no further cause for  
24 disciplinary action against the real estate license of Respondent  
25 MASUD AKBAR SARWARY occurs within three (3) years from  
26 the effective date of the Decision, then the stay hereby granted  
27 shall become permanent.

1                    2.    The restricted license issued to Respondent MASUD AKBAR SARWARY  
2 may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of  
3 Respondent's conviction or plea of nolo contendere to a crime which is substantially related to  
4 Respondent's fitness or capacity as a real estate licensee.

5                    3.    The restricted license issued to Respondent MASUD AKBAR SARWARY  
6 may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence  
7 satisfactory to the Commissioner that Respondent has violated any provision of the California  
8 Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or  
9 conditions attaching to the restricted license.

10                   4.    Respondent MASUD AKBAR SARWARY shall not be eligible to apply  
11 for the issuance of an unrestricted real estate license nor for the removal of any of the  
12 conditions, limitations, or restrictions of a restricted license until three (3) years have elapsed  
13 from the effective date of this Decision.

14                   5.    Respondent MASUD AKBAR SARWARY shall, within nine (9) months  
15 from the effective date of this Decision, present evidence satisfactory to the Real Estate  
16 Commissioner that Respondent has, since the most recent issuance of an original or renewal real  
17 estate license, taken and successfully completed the continuing education requirements of  
18 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If  
19 Respondent fails to satisfy this condition, the Commissioner may order the suspension of the  
20 restricted license until Respondent presents such evidence. The Commissioner shall afford  
21 Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to  
22 present such evidence.

23                   6.    Pursuant to Section 10148 of the Business and Professions Code,  
24 Respondent MASUD AKBAR SARWARY shall pay the Commissioner's reasonable cost for: a)  
25 the audits which led to this disciplinary action of \$5,545.50; and, b) a subsequent audit to  
26 determine if Respondent has corrected the trust fund violations found in Paragraph I of the  
27 Determination of Issues not to exceed \$5,545.50. In calculating the amount of the



1 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary  
2 for all persons performing audits of real estate brokers, and shall include an allocation for travel  
3 time to and from the auditor's place of work. Respondent MASUD AKBAR SARWARY shall,  
4 jointly and severally with Respondent FIRST FINANCIAL & REAL ESTATE SERVICES,  
5 INC., pay such costs within sixty (60) days of receiving an invoice from the Commissioner  
6 detailing the activities performed during the audit and the amount of time spent performing  
7 those activities. The Commissioner may suspend the restricted license issued to Respondent  
8 pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if  
9 payment is not timely made as provided for herein, or as provided for in a subsequent agreement  
10 between the Respondent and the Commissioner. The suspension shall remain in effect until  
11 payment is made in full or until Respondent enters into an agreement satisfactory to the  
12 Commissioner to provide for payment, or until a decision providing otherwise is adopted  
13 following a hearing held pursuant to this condition.

14 7. Respondent MASUD AKBAR SARWARY shall prior to the effective date  
15 of the Decision provide evidence satisfactory to the Commissioner that Respondent has cured  
16 the trust fund shortages alleged in the Accusation against FIRST FINANCIAL & REAL  
17 ESTATE SERVICES, INC.

18 8. Any restricted real estate broker license issued to Respondent MASUD  
19 AKBAR SARWARY may be suspended or revoked for a violation by Respondent of any of the  
20 conditions attaching to the restricted license.

21 9. Respondent shall, prior to and as a condition of the issuance of the  
22 restricted license, submit proof satisfactory to the Commissioner of having taken and  
23 successfully completed the continuing education course on trust fund accounting and handling  
24 specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of  
25 satisfaction of this requirement includes evidence that Respondent has successfully completed  
26 the trust fund account and handling continuing education course within 120 days prior to the  
27 effective date of the Decision in this matter.

1                   10. Respondent MASUD AKBAR SARWARY shall, within six (6) months  
2 from the effective date of this Decision, take and pass the Professional Responsibility  
3 Examination administered by the Department including the payment of the appropriate  
4 examination fee. If Respondent fails to satisfy this condition, the Commissioner may order  
5 suspension of Respondent's restricted license until Respondent passes the examination.

6  
7  
8 10/18/11  
DATED

Michael B. Rich  
MICHAEL B. RICH, Counsel  
Department of Real Estate

9  
10  
11 \* \* \*

12                   I have read the Stipulation and Agreement and its terms are understood by me  
13 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by  
14 the California Administrative Procedure Act (including but not limited to Sections 11506,  
15 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and  
16 voluntarily waive those rights, including the right of requiring the Commissioner to prove the  
17 allegations in the Accusation at a hearing at which I would have the right to cross-examine  
18 witnesses against me and to present evidence in defense and mitigation of the charges.

19  
20 FIRST FINANCIAL & REAL ESTATE SERVICES, INC.  
Respondent

21 11/10/11  
22 DATED

Masud Akbar Sarwary  
By: MASUD AKBAR SARWARY

23  
24 11/10/11  
25 DATED

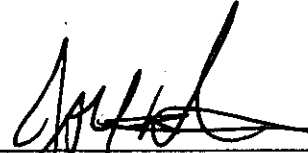
Masud Akbar Sarwary  
MASUD AKBAR SARWARY  
Respondent

26  
27 ///  
H-4214 SD

FIRST FINANCIAL & REAL ESTATE SERVICES,  
INC., MASUD AKBAR SARWARY

1 Approved as to form and content by counsel for Respondents

2  
3 11/15/11  
4 DATED

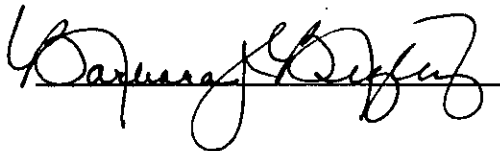
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7 JOEL LEE INCORVAIA  
8 Attorney for Respondents

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10 The foregoing Stipulation and Agreement is hereby adopted by me as my  
11 Decision in these matters as to Respondent FIRST FINANCIAL & REAL ESTATE  
12 SERVICES, INC., and Respondent MASUD AKBAR SARWARY and shall become effective  
13 at 12 o'clock noon on FEB 16 2012

14 IT IS SO ORDERED 1/17/12

15 BARBARA J. BIGBY  
16 Acting Real Estate Commissioner

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27

**FILED**

MICHAEL B. RICH, Counsel  
State Bar No. 84257  
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P. O. Box 187000  
Sacramento, CA 95818-7000  
Telephone: (916) 227-1126

**July 7, 2011**

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	NO. H-4214 SD
	)	
	)	
FIRST FINANCIAL & REAL ESTATE	)	ACCUSATION
SERVICES, a California corporation, and	)	
MASUD AKBAR SARWARY,	)	
	)	
Respondents.	)	

The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the State of California, for Amended Accusation against Respondent FIRST FINANCIAL & REAL ESTATE SERVICES doing business under the fictitious names of FIRST FINANCIAL, FIRST REALTY & INVESTMENTS, GOLDEN REVERSE FUNDING, THE LOAN RELIEF NETWORK, and WHOLESALE DIVISION, and against Respondent MASUD AKBAR SARWARY is informed and alleges as follows:

1

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

///

Respondents FIRST FINANCIAL & REAL ESTATE SERVICES and MASUD AKBAR SARWARY 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").

At all times herein mentioned, Respondent FIRST FINANCIAL & REAL ESTATE SERVICES (hereinafter "Respondent FFRES") was and is licensed by the Department of Real Estate (hereinafter "the Department") as a corporate real estate broker.

At all times herein mentioned, Respondent MASUD AKBAR SARWARY (hereinafter "Respondent SARWARY") was and is licensed by the Department as an individual real estate broker.

At all times herein mentioned, Respondent SARWARY was and is licensed by the Department as the designated broker/officer of Respondent FFRES. As said designated broker/officer, Respondent SARWARY was at all times mentioned herein responsible pursuant to Section 10159.2 and Section 10177(h) of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of Respondent FFRES for which a real estate license is required.

At all times herein mentioned, Respondent FFRES engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(d) of the Code, including on behalf of others, for compensation or in expectation of compensation, Respondent solicited borrowers or lenders for 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.

FIRST CAUSE OF ACTION

7

There is hereby incorporated in this First, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 6, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

8

Within the three-year period prior to the filing of this Accusation, in acting as a real estate broker as described in Paragraph 6, above, Respondent FFRES accepted or received funds in trust (hereinafter "trust funds") from or on behalf of lenders, note owners, buyers, borrowers, and/or others in connection with the said mortgage activities and loan services.

9

Within the three-year period prior to the filing of this Accusation and at all times herein mentioned, in the course and scope of the activities described in Paragraph 6, above, Respondent FFRES solicited borrowers and/or lenders, and/or negotiated loans secured directly or collaterally by liens on real property, wherein such loans were to be brokered, arranged, processed, and/or consummated on behalf of others, and/or solicited and negotiated to perform services for borrowers in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, pursuant to Section 10131(d) of the Code, wherein Respondent claimed, demanded, charged, received, and collected, and provided a written contract for, advance fees from borrowers for the purpose of modifying the existing terms of loans secured by borrowers' real property, which Respondent was to perform thereafter for or in expectation of compensation, including, but not limited to, the following transactions:

Borrower	Property	Advance Fee	Date Collected or Deposited	Written Fee Agreement
Mary Snow	2708 Alta Street	\$2,400.00	8/6/09	7/28/09
	Los Olivos, California	<u>\$2,099.00</u>	10/29/09	
	<u>Total</u>	<u>\$4,499.00</u>		

1	Alberto & Alicia	1536 Clavelita Pl.	\$1,000.00	4/16/09	4/10/09
2	Torres	San Diego, California	\$ 750.00	5/14/09	
3			\$ 500.00	7/2/09	
4			\$ 600.00	9/3/09	
5			\$ 600.00	11/6/09	
6		<u>Total</u>	<u>\$3,450.00</u>		
7	Dean Whyte	525 E. 16th Avenue	\$1,749.50	5/7/09	5/7/09 (Est.)
8		San Mateo, California	<u>\$1,749.50</u>	11/6/09	
9		<u>Total</u>	<u>\$3,499.00</u>		
10	Daniel McManus	132 Candy Lane	\$1,499.50	2/24/09	2/12/09
11	Dana Plant	Encinitas, California	<u>\$1,499.50</u>	4/1/09	
12		<u>Total</u>	<u>\$2,999.00</u>		
13	Steve Corriea	7601 Sullivan Drive	\$1,749.50	7/3/09	7/31/09
14	Sandra Wright	Antelope, California	<u>\$1,749.50</u>	10/12/09	
15		<u>Total</u>	<u>\$3,499.00</u>		

10

The fees described in Paragraph 9, above, constituted an "advance fee" within the meaning of Section 10026 of the Code ("Advance Fee" is fee claimed, demanded, charged, received, collected or contracted from principal for listing, for offer to sell or lease property or business opportunity, for referral to brokers or salesmen, for soliciting borrowers or lenders, for negotiating real estate loans) and 10131.2 of the Code (Real estate broker is a person who engages in business of claiming, demanding, charging, receiving, collecting or contracting for advance fees in connection with any employment to promote sale, lease of real property or business opportunity, or exchange or to obtain loans on real property). Said fees constituted trust funds within the meaning of Section 10145 of the Code (broker accepts funds belonging to others in connection with acts requiring a real estate license shall place funds into neutral escrow, hands of principal or into trust account) and Section 10146 of the Code (advance fees collected by broker are trust funds and broker shall furnish verified quarterly accounting to principal).

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1  
2 Within the three-year period prior to the filing of this Accusation, in connection  
3 with the collection and disbursement of trust funds, the aforesaid trust funds accepted or  
4 received by Respondent FFRES, were deposited or caused to be deposited by said Respondent  
5 into a bank account maintained by Respondent at Comerica Bank, 2307 Fenton Parkway, San  
6 Diego, California, Account No. 1894101854, entitled "First Financial & Real Estate Services  
7 Broker Trust Account" (hereinafter "Trust Account #1) with Respondent SARWARY and  
8 licensed real estate salesperson licensee Casey LeBlanc as the authorized signatories on said  
9 account.

10  
11 In connection with the collection, receipt, and handling of the advance fees as  
12 described in Paragraph 9, above, Respondent collected or received and/or deposited to Trust  
13 Account #1 advance fees from borrowers Mary Snow, Alberto and Alicia Torres, Dean Whyte,  
14 and Steve Corriea and Sandra Wright for loan modification services on or after October 12,  
15 2009, in violation of Section 10085.6 of the Code (effective October 11, 2009, unlawful for  
16 licensee to negotiate, attempt to negotiate, arrange or attempt to arrange or offer to perform loan  
17 modification or mortgage loan forbearance who claims, demands, charges, collects, or receives  
18 fee, compensation, or wage assignment prior to full performance of each and every service  
19 licensee contracted to perform).

20  
21 Within the three-year period prior to the filing of this Accusation, in connection  
22 with the collection, receipt and handling of advance fees described in Paragraph 9, above,  
23 Respondents failed to provide to borrowers Mary Snow, Alberto and Alicia Torres, and Steve  
24 Corriea and Sandra Wright the required verified accounting of the advance fee trust funds and  
25 failed to provide to the borrowers any accounting expressly representing the amounts of trust  
26 funds disbursed, the date of trust fund disbursement, the commission paid, and overhead and  
27 profit as required by Section 10146 of the Code and containing the information required by



1 Chapter 6, Title 10, California Code of Regulations (hereinafter "Regulations"), Section 2972  
2 (requiring broker to provide principal with verified accounting of advance fee trust funds  
3 collected and disbursed identifying agent name, principal's name, services rendered, trust  
4 account into which funds deposited, amount of advance fee, amounts disbursed, commissions  
5 paid, overhead, costs, and profit).

6 14

7 Within the three-year period prior to the filing of this Accusation, in connection  
8 with the collection and disbursement of trust funds as set forth in Paragraphs 6, 8, and 9, above,  
9 Respondent FFRES failed to deposit and maintain the trust funds in a trust account or neutral  
10 escrow depository, or to deliver said funds into the hands of the owners of the funds, as required  
11 by Section 10145 of the Code, in such a manner that as of September 30, 2009, there was a trust  
12 fund shortage in the approximate sum of \$307.93 in Trust Account #1.

13 15

14 Within the three-year period prior to the filing of this Accusation, in connection  
15 with the collection and disbursement of trust funds as set forth in Paragraphs 6, 8, and 9, above,  
16 Respondent FFRES:

- 17 (a) Failed to maintain a control record for trust funds received and disbursed  
18 that contained all of the information required by Section 2831 of the  
19 Regulations (requiring record of trust funds received and disbursed in  
20 columnar form, in chronological sequence, dates of receipt, from whom  
21 received, dates disbursed, date deposited, identity of depository, daily  
22 balance, etc.) for Trust Account #1 for trust funds deposited to and  
23 disbursed from said account;
- 24 (b) Failed to keep a separate record for each beneficiary or transaction,  
25 accounting for all funds that have been deposited to Trust Account #1  
26 containing all of the information required by Section 2831.1 of the  
27 Regulations (broker shall keep separate record for each beneficiary for all

1 funds including identity of parties, dates of deposit and withdrawal,  
2 amounts, check numbers, balance after posting) including, but not limited  
3 to an accurate daily balance after posting transactions;

4 (c) Failed to perform, at least once a month, a reconciliation of all the  
5 separate beneficiary records with the control record, and/or failed  
6 to maintain a record of such reconciliations as required by Section 2831.2  
7 of the Regulations (maintain written record of and perform once each  
8 month balance of all separate beneficiary funds and reconcile funds  
9 received with funds disbursed, etc.) for Trust Account #1 for trust funds  
10 deposited into and disbursed from said account;

11 (d) Failed to obtain the prior written consents of the principals for the  
12 reduction of the aggregate balance of trust funds in Trust Account #1 to  
13 an amount less than the existing aggregate trust fund liability to the  
14 owners of said funds as required by Section 2832.1 of the Regulations  
15 (requiring written consent of every principal whose funds in the account  
16 shall be obtained by broker prior to each disbursement if such reduces the  
17 balance of funds in account to an amount less than existing trust fund  
18 aggregate liability of broker to all owners of funds); and,

19 (e) Failed to maintain for a period of three years a copy of separate  
20 beneficiary records for Trust Account #1 or make such records available  
21 to the Commissioner's representative in violation of Section 10148 of the  
22 Code (broker shall retain for three years copies of all documents and  
23 records executed or obtained by broker in connection with any transaction  
24 requiring a real estate license and shall make such available to the  
25 Commissioner's representative upon notice).

26 ///

27 ///

The acts and/or omissions of Respondent FFRES as alleged above constitute cause for the suspension or revocation of the licenses and license rights of Respondent under the following provisions:

- (a) As alleged in Paragraphs 9 and 12, above, under Section 10085.6 of the Code (effective October 11, 2009, unlawful for licensee to negotiate, attempt to negotiate, arrange or attempt to arrange or offer to perform loan modification or mortgage loan forbearance who claims, demands, charges, collects, or receives fee, compensation, or wage assignment prior to full performance of each and every service licensee contracted to perform) in conjunction with Section 10177(d) of the Code (suspension or revocation of license for willful disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§ 11000 et seq. of the Code, or of the Regulations);
- (b) As alleged in Paragraphs 9 and 13, above, under Section 10146 of the Code (advance fees are trust funds, broker collecting advance fees shall deposit such fees into a trust account, and broker shall furnish verified quarterly accounting to principal) and Section 2972 of the Regulations (requiring broker to provide principal with verified accounting of advance fee trust funds collected and disbursed identifying agent name, principal's name, services rendered, trust account into which funds deposited, amount of advance fee, amounts disbursed, commissions paid, overhead, costs, and profit) all in conjunction with Section 10177(d) of the Code;
- (c) As alleged in Paragraph 14, above, under Section 10145 of the Code (broker accepting funds belonging to others not immediately placed into hands of principal or into neutral escrow depository shall deposit funds into a trust account maintained by broker in a bank until disbursed in

1 accordance with principal's instructions) in conjunction with Section  
2 10177(d) of the Code;

3 (d) As alleged in Paragraph 15(a), under Section 2831 of the Regulations  
4 (requiring record of trust funds received and disbursed in columnar form,  
5 in chronological sequence, dates of receipt, from whom received, dates  
6 disbursed, date deposited, identity of depository, daily balance, etc.) in  
7 conjunction with Section 10177(d) of the Code;

8 (e) As alleged in Paragraph 15(b), under Section 2831.1 of the Regulations  
9 (broker shall keep separate record for each beneficiary for all funds  
10 including identity of parties, dates of deposit and withdrawal, amounts,  
11 check numbers, balance after posting) in conjunction with Section  
12 10177(d) of the Code;

13 (f) As alleged in Paragraph 15(c), under Section 2831.2 of the Regulations  
14 (maintain written record of and perform once each month balance of all  
15 separate beneficiary funds and reconcile funds received with funds  
16 disbursed, etc.) in conjunction with Section 10177(d) of the Code;

17 (g) As alleged in Paragraph 15(d), under Section 2832.1 of the Regulations  
18 (requiring written consent of every principal whose funds in the account  
19 shall be obtained by broker prior to each disbursement if such reduces the  
20 balance of funds in account to an amount less than existing trust fund  
21 aggregate liability of broker to all owners of funds) in conjunction with  
22 Section 10177(d) of the Code; and,

23 (h) As alleged in Paragraph 15(e), under Section 10148 of the Code (broker  
24 shall retain for three years copies of all documents and records executed  
25 or obtained by broker in connection with any transaction requiring a real  
26 estate license and shall make such available to the Commissioner's  
27

representative upon notice) in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACTION

17

There is hereby incorporated in this Second, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 16, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

18

Within the three-year period prior to the filing of this Accusation, in connection with the mortgage lending activities described in Paragraph 6, above, Respondent FFRES originated loans secured by real property on behalf of borrowers in the following transactions:

Borrower	Property	Loan Amount	Close Date
Ronnie L. Hill Richard Aranda	85 Trinity Street Oceanside, California	\$310,632.00	2/8/10
Kenneth Quigley Toni Quigley	5355 Beachcomber Street Oxnard, California	\$492,500.00	6/1/09
Nikolay I. Diankov Galina T. Diankov	15329 Acacia Pine Mountain Club, California	\$157,102.00	10/14/09
Hellmuth & Eva Zieleniewicz	4 Cavendish Lane Piedmont, California	\$380,000.00	9/17/09
Wayne R. Miller	112 Garden Street Arroyo Grande, California	\$283,298.00	8/5/09

19

Within the three-year period prior to the filing of this Accusation, and at all times herein mentioned, in the course and scope of soliciting borrowers and negotiating loans secured by real property as set forth in Paragraph 18, above, Respondent FFRES was required to provide to borrowers a Mortgage Lender Disclosure Statement (hereinafter "MLDS") and/or a Good Faith Estimate (hereinafter "GFE") pursuant to Section 10240 of the Code (within 3 business

days after receipt of written loan application or before borrower becomes obligated on the note, whichever is earlier, broker negotiating a loan secured by real property shall deliver to borrower as signed by borrower a copy of the disclosure containing information required by section 10241 of the Code) showing the name of the broker negotiating the loan, the broker license number, and/or showing the license number of the broker's representative, and as signed by the borrower, and containing a statement that the MLDS and/or GFE does not constitute a loan commitment, in conformance with and containing the information required by Section 10241 of the Code (requiring MLDS or GFE to disclose: all costs and expenses of loan; commissions, points and bonuses paid to broker; liens encumbering the property; amounts to be paid by borrower to others; loan balance; funds due to borrower; principal; interest rate; balloon payments; name, address and license number of broker; inclusion of broker controlled funds; prepayment terms; etc.).

20

Within the three-year period prior to the filing of this Accusation, in connection with the mortgage lending activities described in Paragraph 18, above, Respondent FFRES provided to the borrowers in the aforesaid transactions an MLDS and/or GFE that failed to conform to the requirements set forth in Sections 10240 and 10241 of the Code as follows:

Borrower	Property	Information Not Disclosed To Borrower on MLDS/GFE
Ronnie L. Hill Richard Aranda	85 Trinity Street Ocnaside, California	Failed to disclose anticipated liens to be recorded against property.
Kenneth Quigley Toni Quigley	5355 Beachcomber Street Oxnard, California	Failed to disclose current and anticipated liens against the property.
Nikolay I. Diankov Galina T. Diankov	15329 Acacia Pine Mountain Club, California	Failed to disclose anticipated liens to be recorded against property.
Hellmuth & Eva Zieleniewicz	4 Cavendish Lane Piedmont, California	Failed to disclose estimated compensation to broker in form of Yield Spread Premium.

///

1 Wayne R. Miller 112 Garden Street  
2 Arroyo Grande, California

Failed to disclose anticipated liens to be  
recorded against property, and to disclose  
estimated compensation to broker in form  
of Yield Spread Premium.

4 21

5 Within the three-year period prior to the filing of this Accusation, in connection  
6 with the mortgage lending activities described in Paragraph 18, above, Respondent FFRES  
7 failed to obtain the signatures of Nikolay I. and Galina T. Diankov on the MLDS and/or GFE  
8 within three days after the date said borrowers signed the loan application as required under  
9 Section 10240 of the Code.

10 22

11 Within the three-year period prior to the filing of this Accusation, in connection  
12 with the mortgage lending activities described in Paragraph 18, above, Respondent FFRES  
13 failed to obtain the signatures of Ronnie L. Hill and Richard Aranda on the MLDS and/or GFE  
14 within three days after the date said borrowers signed the loan application as required under  
15 Section 10240 of the Code.

16 23

17 The acts and/or omissions of Respondent FFRES as alleged in Paragraphs 18, 19,  
18 20, 21, and 22, above, constitute cause for the suspension or revocation of the licenses and  
19 license rights of said Respondent under the following provisions:

- 20 (a) As alleged in Paragraphs 18, 19 and 20, under Section 10240 and Section  
21 10241 of the Code (requiring MLDS or GFE to disclose: all costs and  
22 expenses of loan; commissions, points and bonuses paid to broker; liens  
23 encumbering the property; amounts to be paid by borrower to others; loan  
24 balance; funds due to borrower; principal; interest rate; balloon payments;  
25 name, address and license number of broker; inclusion of broker  
26 controlled funds; prepayment terms; etc.) all in conjunction with Section  
27 10177(d) of the Code (suspension or revocation of license for willful

disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§ 11000 et seq. of the Code, or of the Regulations);

(b) As alleged in Paragraphs 18, 19 and 21, under Section 10240 (within 3 business days after receipt of written loan application or before borrower becomes obligated on the note, whichever is earlier, broker negotiating a loan secured by real property shall deliver to borrower as signed by borrower a copy of the disclosure containing information required by Section 10241 of the Code) in conjunction with Section 10177(d) of the Code; and,

(c) As alleged in Paragraphs 18, 19 and 22, under Section 10240 (within 3 business days after receipt of written loan application or before borrower becomes obligated on the note, whichever is earlier, broker negotiating a loan secured by real property shall deliver to borrower as signed by borrower a copy of the disclosure containing information required by Section 10241 of the Code) in conjunction with Section 10177(d) of the Code.

### THIRD CAUSE OF ACTION

24

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

25

At all times herein mentioned, Respondent SARWARY was responsible, as the designated broker officer of FFRES, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees and of the corporate activities requiring a real estate license. Respondent SARWARY failed to exercise reasonable supervision and control over the loan services and mortgage brokering activities of FFRES and



1 its employees. In particular, Respondent SARWARY participated in, permitted, ratified,  
2 acquiesced in, and/or caused the conduct described in the First, Second, and Third Causes of  
3 Action, above, to occur, and failed to take reasonable steps to insure, including, but not limited  
4 to, the proper handling of trust funds, proper trust fund record keeping, review of trust fund  
5 records and accounts, quarterly verified accountings to borrowers paying advance fees, that  
6 advance fees would not be collected on and after October 11, 2009, review and approval and  
7 timely signing of Mortgage Lending Disclosure Statements and/or Good Faith Estimates, proper  
8 maintenance and retention of transactional records, and to insure the implementation of policies,  
9 rules, procedures, and systems to ensure the compliance of the corporation and its employees  
10 with the Real Estate Law (Business and Professions Code Sections 10000 et seq. and Sections  
11 11000 et seq.) and the Commissioner's Regulations (Chapter 6, Title 10, California Code of  
12 Regulations).

13 26

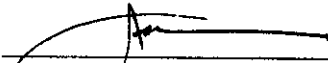
14 The acts and/or omissions of Respondent SARWARY as described in Paragraph  
15 25, above, constitute grounds for the suspension or revocation of the licenses and license rights  
16 of Respondent SARWARY under the provisions Section 10159.2 of the Code (designated  
17 broker/officer responsible for supervision and control of activities conducted on behalf of  
18 corporation by officers, licensed salespersons and employees to secure compliance with the Real  
19 Estate Law) and Section 2725 of the Regulations (broker shall exercise reasonable supervision  
20 over: licensed employees; establish policies and procedures for compliance with Real Estate  
21 Law; supervise transactions requiring a real estate license; trust fund handling; etc.), all in  
22 conjunction with Section 10177(d) of the Code and/or of Section 10177(h) of the Code  
23 (suspension or revocation for broker or designated broker/officer who fails to exercise  
24 reasonable supervision of licensed employees or licensed activities of broker corporation).

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

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10 JOSEPH AIU  
Deputy Real Estate Commissioner

11 Dated at San Diego, California,

12 this 29 day of June, 2011.  
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