

FILED

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August 10, 2011

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of

NO. H-4218 SD

13 SANDIEGOHOUSEHUNTER, INC., and
14 MATTHEW JOHN BATTIATA,

ACCUSATION

15 Respondents.

16 The Complainant, JOSEPH AIU, in his official capacity as a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation against
18 SANDIEGOHOUSEHUNTER, INC. (hereinafter "SHH") and MATTHEW JOHN BATTIATA
19 (hereinafter "BATTIATA"), (collectively referred to herein as "Respondents") is informed and
20 alleges as follows:
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23

24 SHH is presently licensed by the Department of Real Estate (hereinafter "the
25 Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
26 California Business and Professions Code (hereafter "the Code"), as a corporate real estate broker,
27

1 and at all times relevant herein was acting by and through BATTIATA as its designated officer
2 broker.

3 2

4 At all times relevant herein, SHH had the following fictitious business names
5 registered with the Department: "Battiata Real Estate Group" and "Unified Escrow Services".

6 3

7 The corporate structure of SHH is as follows:

Name	Title	License	Shares %
Matthew Battiata	President	REB	100

8
9
10 4

11 BATTIATA is presently licensed by the Department and/or has license rights under
12 the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker.

13 5

14 At all times relevant herein, BATTIATA was licensed by the Department as the
15 designated officer broker of SHH. As the designated officer broker, BATTIATA was responsible,
16 pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents,
17 real estate licensees and employees of SHH for which a real estate license is required.

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19 Whenever reference is made in an allegation in this Accusation to an act or omission
20 of SHH, such allegation shall be deemed to mean that the employees, agents and real estate
21 licensees employed by or associated with SHH committed such act or omission while engaged in
22 furtherance of the business or operations of SHH and while acting within the course and scope of
23 their authority and employment.

24 7

25 At all times herein mentioned, SHH engaged in activities on behalf of others within
26 the State of California for or in expectation of compensation, for which a real estate license is
27 required under:

1 (a) Section 10131(a) of the Code, including the operation and conduct of a
2 real estate brokerage that included the sale or offer of sale, purchase or
3 offer of purchase, solicitation of prospective sellers and purchasers of,
4 solicitation or obtaining listings of, or negotiations of the purchase, sale or
5 exchange of real property or a business opportunity; and

6 (b) Section 10131(d) of the Code, including the solicitation of borrowers or
7 lenders for or negotiation of loans or collection of payments or
8 performance of services for borrowers or lenders or note owners in
9 connection with loans secured directly or collaterally by liens on real
10 property or on a business opportunity.

11 FIRST CAUSE OF ACTION

12 As Against SHH

13 8

14 Each and every allegation in Paragraphs 1 through 7, inclusive, above, is
15 incorporated by this reference as if fully set forth herein.

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17 Beginning on or about May 13, 2009, and continuing intermittently until October 20,
18 2009, an audit was conducted at SHH's offices located at 2141 Palomar Airport Drive, Suite 100,
19 Carlsbad, California, 445 Marine View Avenue, No. 390, Del Mar, California, and at the
20 Department of Real Estate's Los Angeles District Office, wherein the Auditor examined SHH's
21 records for the period of May 1, 2006 through April 30, 2009, (hereinafter "the audit period").

22 10

23 While acting as a corporate real estate broker as described in Paragraph 7, above, and
24 within the audit period, SHH accepted or received funds in trust (hereinafter "trust funds") from or
25 on behalf of sellers, buyers, borrowers, lenders, and/or others in connection with loans secured
26 directly or collaterally by liens on real property or on a business opportunity, and in connection with
27

1 the sale of residential property, for or in expectation of compensation, as alleged herein, and
2 thereafter from time-to-time made disbursements of said trust funds.

3 11

4 The trust funds accepted or received by SHH as described in Paragraph 10, above,
5 were deposited or caused to be deposited by SHH into three bank accounts maintained by SHH for
6 the handling of trust funds, and thereafter from time-to-time SHH made disbursements of said trust
7 funds, identified as follows:

8

9 **BANK ACCOUNT # 1**

10 Bank Name and Location:	California Bank, P.O. Box 489, Lawndale, California
11 Account No.:	XXXXXXX3691
12 Entitled:	"Sandiegohousehunter Inc DBA: Unified Escrow Services"
13 Signatories:	Matthew Battiata (REB/DO)
14 No. of Signatures Required:	One

15

16

17 **BANK ACCOUNT # 2**

18 Bank Name and Location:	Chase WaMu, P.O. Box 660022, Dallas, Texas
19 Account No.:	XXX-XXX567-7
20 Entitled:	"Sandiegohousehunter Inc DBA: Unified Escrow Services 21 (Trust Account)"
22 Signatories:	Matthew Battiata (REB/DO)
23 No. of Signatures Required:	One

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BANK ACCOUNT # 3	
Bank Name and Location:	Chase WaMu, P.O. Box 660022, Dallas, Texas
Account No.:	XXX-XXX166-1
Entitled:	"Sandiegohousehunter Inc DBA: Unified Escrow Services (Trust Acct)"
Signatories:	Matthew Battiata (REB/DO) Melissa Carson (Unlicensed) Anthony Rivera (RES) Rebecca Scott (Unlicensed)
No. of Signatures Required:	One

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In the course of the activities described in Paragraph 7, above, and within the audit period, SHH:

- (a) caused, suffered, or permitted the balance of funds in Bank Account #1 to be reduced to an amount which, as of April 30, 2009, was approximately \$4,583.29 less than the aggregate liability of Bank Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations (hereafter "the Regulations");
- (b) caused, suffered, or permitted the balance of funds in Bank Account #3 to be reduced to an amount which, as of April 30, 2009, was approximately \$75,515.74 less than the aggregate liability of Bank Account #3 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

- 1 (c) allowed employees MELISSA CARSON and REBECCA SCOTT,
2 unlicensed at all times relevant herein, and not covered by a fidelity
3 bond equal to the maximum amount of the trust funds to which
4 MELISSA CARSON and REBECCA SCOTT had access, to appear as
5 signatories on Bank Account #3, in violation of Section 10145 of the
6 Code and Section 2834 of the Regulations in conjunction with Section
7 2951 of the Code;
- 8 (d) failed to keep an accurate record in chronological sequence and in columnar
9 form of all trust funds received and disbursed including the daily balance in
10 connection with SHH's broker escrow activity for Bank Account #3, in
11 violation of Section 10145 of the Code and Section 2831 of the Regulations
12 in conjunction with Section 2951 of the Regulations;
- 13 (e) failed to maintain separate records in chronological sequence and in columnar
14 form of trust funds accepted or received for each beneficiary or transaction,
15 including the daily balance, in connection with SHH's broker escrow activity
16 for Bank Account #3 in violation of Section 10145 of the Code and Section
17 2831.1 of the Regulations in conjunction with Section 2951 of the
18 Regulations;
- 19 (f) failed to reconcile the total of separate beneficiary or transaction records with
20 a control record of trust funds received and disbursed on a monthly basis for
21 Bank Account #1 and Bank Account #3, in violation of Section 10145 of the
22 Code and Section 2831.2 of the Regulations in conjunction with Section
23 2951 of the Regulations;
- 24 (g) failed to place funds accepted on behalf of another into the hands of the
25 owner of the funds, into a neutral escrow depository or into a trust fund
26 account in the name of the broker, or in a fictitious name if the broker is the
27 holder of a license bearing such fictitious name, as trustee at a bank or other

1 financial institution not later than three business days following receipt of the
 2 funds by the broker, in violation of Section 10145 of the Code and Section
 3 2832 of the Regulations, for transactions including, but not limited to, the
 4 following;

6 Client Name	Property	Deposit Amount	Acceptance Date	Date Forwarded to Escrow
8 Gavin	2556 Chicago St., 9 #14, San Diego, CA	\$2,000	12/12/08	12/16/08

10 (h) in connection with SHH's broker escrow activities, SHH failed to disclose to
 11 all principals that its Designated Officer, BATTIATA, had an interest in
 12 SHH, the agency performing the escrow under its registered fictitious
 13 business name "Unified Escrow Services", as a stockholder, officer, and/or
 14 owner, in violation of Section 2950(h) of the Regulations, and Section
 15 10176(i) of the Code; and,

16 (i) claimed or took secret or undisclosed amounts of compensation, commissions
 17 or profits under an agreement which authorized SHH to do acts for which a
 18 license is required for compensation or commission prior to or coincident
 19 with the signing of an agreement evidencing the meeting of the minds of the
 20 contracting parties, in violation of Section 10176(g) of the Code, including,
 21 but not limited to the following transactions:

23 Client Name	Property	Escrow Date	Fee Amount	Fee Description	Payable To:
25 J. Hess 26 (Seller)	2265 Annadale Way, Chula Vista, CA	08/19/08	\$495.00	"Compliance Fee"	Battiata Real Estate Group

The acts and/or omissions of SHH as alleged in Paragraph 12, above, constitute grounds for the suspension or revocation of SHH's license and license rights pursuant to Sections 10177(d) (Willful Disregard/Violation of Real Estate Law) and/or 10177(g) (Negligent/Incompetence in Performing Act Requiring Licensee) of the Code.

The acts and/or omissions of SHH as alleged in Paragraph 12, above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (Reimbursement for Cost of Audit for Trust Fund Handling Violation) of the Code.

SECOND CAUSE OF ACTION

As Against BATTIATA

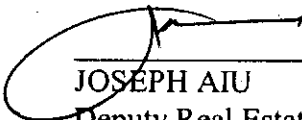
Each and every allegation in Paragraphs 1 through 14, inclusive, above, is incorporated by this reference as if fully set forth herein.

BATTIATA, as the designated officer broker of SHH, was required to exercise reasonable supervision and control over the activities of SHH and its employees pursuant to Section 10159.2 (Reasonable Supervision by Designated Officer) of the Code and Section 2725 of the Regulations (Reasonable Supervision by Broker).

BATTIATA failed to exercise reasonable supervision over the acts and/or omissions of SHH and its employees in such a manner as to allow the acts and/or omissions as described in Paragraph 12, above, to occur, which constitutes cause for the suspension or revocation of the licenses and license rights of BATTIATA under Sections 10177(d) (Willful Disregard/Violation of Real Estate Law) and/or 10177(g) (Negligence/Incompetence in Performing Act Requiring License) of the Code, and Sections 10177(h) (Failure to Exercise Reasonable Supervision) and 10159.2 (Reasonable Supervision by Designated Officer) of the Code.

In connection with SHH's residential property resale activities, BATTIATA failed to disclose to all principals that he had an interest in SHH, the agency performing the escrow under its registered fictitious business name "Unified Escrow Services", as a stockholder, officer, and/or owner, in violation of Section 2950(h) of the Regulations, which constitutes cause for the suspension or revocation of the licenses and license rights of BATTIATA under Sections 10177(d) (Willful Disregard/Violation of Real Estate Law) and/or 10177(g) (Negligence/Incompetence in Performing Act Requiring License) of the Code, and 10176(i) (Dishonest Dealing) of the Code.

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 all Respondents named herein under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.



JOSEPH AIU
Deputy Real Estate Commissioner

Dated at San Diego, California

this 9 day of August, 2011.