

FILED

December 29, 2011

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DEPARTMENT OF REAL ESTATE

By 

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-4271 SD
)	
)	ACCUSATION
JOHN MONIR ESTEFANOS,)	
)	
)	
Respondent.)	
_____)	

The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the State of California, for Accusation against JOHN MONIR ESTEFANOS, 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 Respondent in his official capacity.

2

Respondent JOHN MONIR ESTEFANOS (hereinafter "Respondent ESTEFANOS") was and is licensed and/or presently has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter "the Code").

At all times herein mentioned, PACIFIC QUEST REAL ESTATE, INC. (hereinafter "PQRE"), was licensed by the Department of Real Estate (hereinafter "Department") as a corporate real estate broker until such license expired on July 5, 2010. On April 5, 2010, PQRE filed a Certificate of Dissolution with the California Secretary of State and thereupon ceased to exist.

At all times herein mentioned, Respondent ESTEFANOS was and is licensed by the Department as an individual real estate broker.

At all times herein mentioned, Respondent ESTEFANOS was licensed by the Department as the designated broker/officer of PQRE. As said designated broker/officer, Respondent ESTEFANOS was, at all times herein mentioned, responsible pursuant to Sections 10159.2 and 10177(h) of the Code and Section 2725 of Chapter 6, Title 10, California Code of Regulations (hereinafter "Regulations") for the supervision of the activities of the officers, agents, and employees of, and of the real estate licensees employed by PQRE and supervision of the activities of said corporation for which a real estate license is required.

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

At all times herein mentioned, Respondent ESTEFANOS was the chief executive officer, sole director, sole stockholder, and agent for service of process of PQRE, and, therefore,

1 PQRE was the alter ego of Respondent ESTEFANOS and whenever a reference is made to an
2 act, omission or representation of PQRE, such allegation shall be deemed to mean that
3 Respondent ESTEFANOS was so acting, failing to act, and/of speaking, or that such act, failure
4 to act, and/or representation was done at the direction of or ratified by Respondent
5 ESTEFANOS.

6 8

7 At all times herein mentioned, Respondent ESTEFANOS, and PQRE,
8 collectively and individually, engaged in the business of, acted in the capacity of, advertised, or
9 assumed to act as a real estate broker within the State of California within the meaning of
10 Section 10131(d) of the Code, including on behalf of others, for compensation or in expectation
11 of compensation, solicited borrowers or lenders for or negotiated loans or collected payments or
12 performed services for borrowers or lenders or note owners in connection with loans secured
13 directly or collaterally by liens on real property or on a business opportunity.

14 FIRST CAUSE OF ACTION

15 9

16 There is hereby incorporated in this First, separate and distinct, Cause of Action,
17 all of the allegations contained in Paragraphs 1 through 8, inclusive, of the Accusation with the
18 same force and effect as if herein fully set forth.

19 10

20 Within the three-year period prior to the filing of this Accusation, in connection
21 with the real estate activities described in Paragraph 8, above, PQRE, acting and speaking by
22 and through Respondent ESTEFANOS, and Respondent ESTEFANOS acting in his individual
23 capacity, claimed, demanded, charged, received, collected, and provided a written contract for
24 advance fees from borrowers for services Respondent ESTEFANOS and PQRE, by and through
25 Respondent ESTEFANOS, were to perform thereafter in obtaining modifications of loans
26 secured or to be secured directly or collaterally by liens on the borrowers' real property
27 including, but not limited to, the following transactions:

Borrower	Property	Lender	Advance Fee Received	Date Paid
Kristi G.	15357 Maturin Dr. #143 San Diego, CA	National City Mortgage Co.	\$2,499.00	3/23/09

11

The fees described in Paragraph 10, above, constituted "advance fees" within the meaning of Section 10026 of the Code (advance fee is a fee, regardless of form, demanded, charged, received or collected from principal before completing each and every service contracted or represented to be performed) and Section 10131.2 of the Code (broker defined as person in the business of demanding, charging, receiving or collecting advance fee in connection licensed acts including obtaining loans secured by real property). Said fees constituted trust funds within the meaning of Section 10145 of the Code (broker who accepts funds belonging to others in connection with a transaction subject to acts requiring a real estate license shall deposit funds not placed into principal's hands or neutral escrow into a trust fund account maintained by broker) and Section 10146 of the Code (any broker who contracts for or collects an advance fee, such fee is a trust fund, shall deposit such amount into a trust account).

12

In connection with the collection, receipt, and handling of the advance fee as described in Paragraph 10, above, Respondent ESTEFANOS, both individually and while acting and speaking for PQRE, provided to the aforesaid borrower an advance fee contract that had not been approved by the Department of Real Estate prior to use as required by Section 10085 of the Code (authorizing commissioner to require submission and approval of advance fee contract, materials and advertising prior to use), Section 10085.5 of the Code (unlawful to demand, charge, receive, collect or contract for advance fee for performing services for borrowers or lenders in connection with loans secured directly or collaterally by lien on real property unless licensed as a real estate broker) and Section 2970 of the Regulations (person proposing to

1 collect advance fee shall submit all advance fee materials to commissioner not less than 10 days
2 prior to use or publication).

3 13

4 Within the three-year period prior to the filing of this Accusation, in connection
5 with the collection, receipt and handling of advance fees described in Paragraphs 10 and 11,
6 above, Respondent ESTEFANOS, both individually and while acting and speaking for PQRE,
7 was required to provide to the borrowers a verified accounting of the advance fee trust funds
8 collected and disbursed as required by Section 10146 of the Code (each principal shall be
9 furnished a verified accounting at end of each quarter and at completion of contract) and
10 containing the information required by Section 2972 of the Regulations (verified accounting
11 shall include agent's name, principal's name, description of services rendered or to be rendered,
12 identity of trust fund account, amount of advance fee collected, amounts allocated or disbursed
13 describing services performed, commissions paid, overhead and profit, etc.).

14 14

15 Within the three-year period prior to the filing of this Accusation, in connection
16 with the collection, receipt and handling of advance fees described in Paragraphs 10 and 11,
17 above, Respondent ESTEFANOS, both individually and while acting and speaking for PQRE,
18 failed to provide to the borrower the required verified accounting of the advance fee trust funds
19 and failed to provide any accounting expressly representing the amounts of trust funds
20 disbursed, the date of trust fund disbursement, the commission paid, and overhead and profit.

21 15

22 The acts and/or omissions of Respondents as described in Paragraphs 10, 11, 12,
23 13, and 14, above, are grounds for the suspension or revocation of the license and license rights
24 of Respondent ESTEFANOS as follows:

- 25 a.) As alleged in Paragraphs 10 and 12 under Sections 10085 and 10085.5 of
26 the Code and Section 2970 of the Regulations all in conjunction with Section
27 10177(d) of the Code (suspension or revocation of license for willful disregard or

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

3 b.) As alleged in Paragraphs 10, 11, 13 and 14, under Section 10146 of the
4 Code and Section 2972 of the Regulations in conjunction with Section 10177(d)
5 of the Code; and/or

6 c.) As alleged in Paragraphs 10, 11, 13 and 14, under Section 10177(g) of the
7 Code (demonstrated negligence or incompetence in performing an act for which
8 he or she is required to hold a license).

9 SECOND CAUSE OF ACTION

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

14 17

15 Within the three-year period prior to the filing of this Accusation, in the course
16 and scope of the activities set forth in Paragraphs 8 and 10, above, Respondent ESTEFANOS,
17 individually and while acting and speaking for PQRE, represented to Borrower Kristi G.,
18 contrary to fact, as said Respondent knew or should have known at the time through the exercise
19 of reasonable diligence, that Respondent: 1.) would contact the borrowers' lender to negotiate a
20 modification of the borrowers' existing loan secured by liens on their real property as identified
21 in Paragraph 10, above; 2.) communicate regularly with the Borrower's lender to attempt to
22 negotiate new and more favorable loan terms on behalf of Borrower; 3.) would vigorously and
23 successfully seek through the lender an offer to the Borrower a proactive loan modification
24 solution that would allow the borrower to remain in her property while making affordable loan
25 payments; 4.) would refund the fee paid by Borrower if the broker is unable to obtain a loan
26 modification; and, 5) that either party could terminate the contract for any reason and broker
27 would refund to borrower all unearned fees.

The representations described in Paragraph 17, above, were false and misleading and were known by Respondent ESTEFANOS to be false and misleading when made or were with no reasonable grounds for believing said representations to be true, and/or said Respondent should have known at the time through the exercise of reasonable diligence that such representations were false and misleading. In truth and in fact: 1.) Respondent failed to negotiate a loan modification with Borrower's lender; 2.) Respondent's contacts with the lender did not result in any negotiations; 3.) Respondent did not vigorously negotiate with Borrower's lender and did not obtain from the lender any loan modification offers whatsoever; 4.) Respondent would not, did not, and refused to refund any portion the Borrower's advance fees until Borrower filed a civil action and obtained a court judgment; and, 5.) Respondent would and did terminate the advance fee contract and thereafter refused to refund any portion of the Borrower's advance fee.

The acts and omissions of Respondent ESTEFANOS, as described in Paragraphs 17 and 18, above, constitute misrepresentation, fraud, deceit, and dishonest dealing.

The facts alleged in Paragraphs 17, 18 and 19, above, are grounds for the suspension or revocation of the licenses and licensing rights of Respondent ESTEFANOS under the following provisions:

- (a) Under Sections 10176(a) of the Code (making a substantial misrepresentation);
- (b) Under Section 10176(b) of the Code (making any false promises of a character likely to influence, persuade or induce);
- (c) Under Section 10176(i) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing); and/or,

1 (d) Under Section 10177(g) of the Code (demonstrated negligence or
2 incompetence in performing an act for which he or she is required to hold a
3 license).

4 THIRD CAUSE OF ACTION

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

9 22

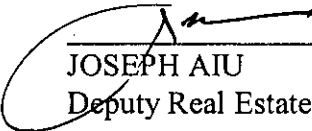
10 At all times herein mentioned Respondent ESTEFANOS was responsible, as the
11 designated broker officer of PQRE, for the supervision and control of the activities conducted
12 on behalf of the corporation by its officers and employees and of the corporate activities
13 requiring a real estate license. Respondent ESTEFANOS failed to exercise reasonable
14 supervision and control over the loan services, mortgage brokering, and advance fee collection
15 activities of PQRE and its employees. In particular, Respondent ESTEFANOS participated in,
16 permitted, ratified, and caused the conduct described in the First and Second, Causes of Action,
17 above, to occur, and failed to take reasonable steps to insure, including, but not limited to,
18 approval for advance fee contracts would be obtained prior to use, insure that no false
19 representations would be made to borrowers, insure that quarterly accounting for advance fees
20 would be provided to borrowers, and to insure the implementation of policies, rules, procedures,
21 and systems to ensure the compliance of the corporation and its employees with the Real Estate
22 Law (Business and Professions Code Sections 10000 et seq. and Sections 11000 et seq.) and the
23 Commissioner's Regulations (Chapter 6, Title 10, California Code of Regulations).

24 23

25 The acts and/or omissions of Respondent ESTEFANOS as described in
26 Paragraph 22, above, constitute grounds for the suspension or revocation of the licenses and
27 license rights of Respondent ESTEFANOS under the provisions Section 10159.2 of the Code

1 (designated broker/officer responsible for supervision and control of activities conducted on
2 behalf of corporation by officers, licensed salespersons and employees to secure compliance
3 with the Real Estate Law) and Section 2725 of the Regulations (broker shall exercise reasonable
4 supervision over: licensed employees; establish policies and procedures for compliance with
5 Real Estate Law; supervise transactions requiring a real estate license; trust fund handling; etc.)
6 in conjunction with Section 10177(d) of the Code and/or of Section 10177(h) of the Code
7 (suspension or revocation for broker or designated broker/officer who fails to exercise
8 reasonable supervision of licensed employees or licensed activities of broker corporation).

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

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16 
17 JOSEPH AIU
Deputy Real Estate Commissioner

18 Dated at San Diego, California,

19 this 28 day of December, 20 11.