

✓
1 ANNETTE E. FERRANTE, Counsel (SBN 258842)
2 DEPARTMENT OF REAL ESTATE
3 P. O. Box 187007
Sacramento, CA. 95818-7007

4 Telephone: (916) 227-0789
-or- (916) 227-0788 (Direct)
5 Fax: (916) 227-9458
6
7

FILED

MAY 4 2012

DEPARTMENT OF REAL ESTATE
By R. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11
12 In the Matter of the Accusation of

NO. H-4341 SD

13 ESTEBAN G. ARVIZU,

ACCUSATION

14 Respondent.
15

16 The Complainant, VERONICA KILPATRICK, in her official capacity as a Deputy
17 Real Estate Commissioner of the State of California, for cause of Accusation against ESTEBAN
18 G. ARVIZU (hereinafter "Respondent"), is informed and alleges as follows:

19 1

20 Respondent is presently licensed by the California Department of Real Estate
21 (hereinafter "the Department") and/or has license rights under the Real Estate Law, Part 1 of
22 Division 4 of the California Business and Professions Code (hereinafter "the Code"), as a real
23 estate broker.

24 2

25 At all times relevant herein, Respondent conducted business under his individual
26 broker license and the registered fictitious business name "Golden Capital Mortgage" associated

27 ///

1 with Respondent's real estate broker license. At no time did Respondent have any other fictitious
2 business names registered with the Department

3 3

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

9 4

10 At all times relevant herein, Respondent engaged in the business of, acted in the
11 capacity of, advertised, or assumed to act as a real estate broker within the State of California on
12 behalf of others, for compensation or in expectation of compensation within the meaning of
13 Section 10131(a) of the Code, including the operation and conduct of a real estate brokerage that
14 included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers
15 and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or
16 exchange of real property or a business opportunity.

17 FIRST CAUSE OF ACTION

18 5

19 Each and every allegation in Paragraphs 1 through 4, inclusive, above, is
20 incorporated by this reference as if fully set forth herein.

21 6

22 Beginning on or about December 20, 2010, and continuing intermittently until June
23 9, 2011, an audit was conducted at Respondent's main office location on 380 North 8th Street in El
24 Centro, California, wherein the Auditor examined Respondent's records for the period of
25 December 1, 2007 through November 30, 2010 (hereinafter "the audit period").

26 ///

27 ///

While acting as a real estate broker as described in Paragraph 4, above, and within the audit period, Respondent accepted or received funds in trust (hereinafter "trust funds") from or on behalf of sellers, buyers, borrowers, lenders, and others in connection with the sale of residential property, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

The trust funds accepted or received by Respondent as described in Paragraph 7, above, were deposited or caused to be deposited by Respondent into a bank account maintained by Respondent for the handling of general business funds, and thereafter from time-to-time Respondent made disbursements of said trust funds.

In the course of the activities described in Paragraph 4, above, and within the audit period, Respondent:

- (a) failed to establish an account for the deposit of trust funds as required by Section 10145 of the Code;
- (b) failed to maintain a record of trust funds received and not placed into broker's trust account, in violation of Section 10145 of the Code and Section 2831 of Title 10 of the California Code of Regulations (hereinafter the "Regulations");
- (c) held earnest money deposits (hereinafter "EMD") beyond three (3) business days following the acceptance of the offer without written authorization from the principals, in violation of Section 10145 of the Code and Section 2832 of the Regulations, for the following transactions:

///

///

///

Buyer Name	Date Offer Accepted	Date EMD Deposited	Escrow Receipt No.
Rafael M. and Blanca S.	03/09/10	03/17/10	33345
Rafael M.	08/24/08	09/11/08	1595681
James and Sun Y.	06/10/08	06/17/08	44917
Olga P.	04/06/10	04/16/10	27834

- (d) misrepresented to owners of properties that an EMD was obtained from the buyers and was being held by Respondent when the buyers made the offers on the properties. The true facts were that Respondent had received no funds when the buyers made the offers on the properties, which constitutes the making of a substantial misrepresentation pursuant to Section 10176(a) of the Code. The following are examples of the same:

Buyer Name	Date Offer Made	Date Offer Accepted	Date on EMD Check
Rafael M. and Blanca S.	02/19/10	03/09/10	03/10/10
Eliseo and Dianna G.	03/04/09	03/10/09	03/05/10

- (e) entered into an independent contractor agreement with David Marcus De La Fuente on April 16, 2007, but failed to immediately notify the Department of his employment until October 10, 2008, which constitutes a violation of Section 10161.8 of the Code and Section 2752 of the Regulations; and
- (f) conducted real estate activities using the fictitious business names "Golden Capital Mortgage & Real Estate" and "Golden Capital Mortgage and Real Estate", without first registering these fictitious names with the Department as required by Section 10159.5 of the Code and Section 2731 of the Regulations. Said fictitious business names were used on the residential purchase contracts, residential listing agreements, buyers inspection advisories and Respondent's business cards.

10

The acts and/or omissions of Respondent as alleged in Paragraph 9, above, constitute grounds for discipline of all licenses and license rights of Respondent pursuant to Sections 10177(d) and/or 10177(g) of the Code, and Section 10176(a) of the Code.

11

The acts and/or omissions of Respondent as alleged in Paragraph 9, above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

SECOND CAUSE OF ACTION

12

Each and every allegation in Paragraphs 1 through 11, inclusive, above, is incorporated by this reference as if fully set forth herein.

13

At all times relevant herein, Respondent was required to exercise reasonable supervision and control over the activities of Respondent's employees, agents and others acting on Respondent's behalf pursuant to Section 2725 of the Regulations (Reasonable Supervision by Broker).

14

Respondent failed to exercise reasonable supervision over the acts and/or omissions of Respondent's employees, agents and others acting on Respondent's behalf in such a manner as to allow the acts and/or omissions as described in Paragraph 9, above, to occur, which constitutes cause for the suspension or revocation of the licenses and license rights of Respondent under Section 10177(h) of the Code and Section 10177(d) and/or 10177(g) of the Code.

COST RECOVERY

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request the

///

1 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
2 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

3 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
4 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
5 against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division
6 4 of the Business and Professions Code), for the cost of investigation and enforcement as
7 permitted by law, and for such other and further relief as may be proper under the provisions of
8 law.

9
10 
11 VERONICA KILPATRICK
12 Deputy Real Estate Commissioner

13 Dated at San Diego, California,
14 this 2 day of May, 2012.
15
16
17
18
19
20
21
22
23
24
25
26
27