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FILED

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DEPARTMENT OF REAL ESTATE

By *R. M. H.*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

12 AXIS REAL ESTATE INCORPORATED
13 and PIERS RICHARD WINDEBANK,

14 Respondents.

No. H-4344 SD

ACCUSATION

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16 The Complainant, VERONICA KILPATRICK, in her official capacity as a
17 Deputy Real Estate Commissioner of the State of California, for cause of Accusation against
18 AXIS REAL ESTATE INCORPORATED and PIERS RICHARD WINDEBANK (collectively
19 referred to herein as "Respondents"), is informed and alleges as follows:

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21 Respondent AXIS REAL ESTATE INCORPORATED, (hereinafter "AXIS"),
22 is presently licensed by the Department of Real Estate (hereinafter "the Department") and/or
23 has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and
24 Professions Code (hereafter "the Code"), as a real estate corporation, and has a license
25 endorsement and/or has license endorsement rights under the Code as a mortgage loan
26 originator corporation, acting by and through PIERS RICHARD WINDEBANK as its
27 designated officer.

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At all times relevant herein, AXIS had the following fictitious business names registered with the Department: "Roots Rock Real Estate", "Ocean Beach Real Estate", "My Easy Realty", "Axis Real Estate And Mortgage Solutions", "Axis Real Estate", and "MyEasyRealty.com".

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Respondent PIERS RICHARD WINDEBANK (hereinafter "WINDEBANK") is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker, and has a license endorsement and/or has license endorsement rights under the Code as a mortgage loan originator.

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At all times herein mentioned, WINDEBANK was licensed by the Department as the designated officer of AXIS. As the designated officer, WINDEBANK was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of AXIS for which a real estate license and mortgage loan originator endorsement is required.

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At all times relevant herein, beginning in or about April 2009, Mark Workman (hereinafter "Workman") was employed by AXIS. At no time herein mentioned was Workman licensed by the Department in any capacity.

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

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At all times mentioned herein, AXIS engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of:

Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage and/or loan modification business with the public wherein each of them solicited lenders and borrowers for or negotiated loans or collected payments and/or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property for or in expectation of compensation; and,

Section 10131.2 of the Code, including the claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.

FIRST CAUSE OF ACTION

(As Against AXIS)

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

Beginning on or about April 11, 2011, and continuing intermittently until April 13, 2011, an audit was conducted at AXIS' main office location at 3235 Hancock Street in San Diego, California, and the Department's Oakland District Office, wherein the Auditor examined AXIS' records for the period of April 1, 2008 through March 31, 2011 (hereinafter "the audit period").

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While acting as a real estate broker as described in Paragraph 7, above, and within the audit period, AXIS accepted or received funds in trust (hereinafter "trust funds") from or on behalf of borrowers, lenders, and/or others in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, for or in expectation of compensation, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

In connection with the operation and conduct of the activities described in Paragraph 7, above, and within the audit period, AXIS engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advanced fees, which constitute trust funds, within the meaning of Sections 10026 and 10131.2 of the Code, including but not limited to the following:

Borrower	Property	Advance Fee	Approximate Date Fee Submitted to Respondents
S. and T. Perez	7264 Alpine Drive	\$1,695.00	03/27/09
D. and K. Hamersky	6350 SE Shawnee Heights Road	\$1,666.66	09/11/09
J. Guizar	1968 1 st Ave. #6	\$2,000.00	06/28/09

The trust funds accepted or received by AXIS as described in Paragraphs 10 and 11, above, were deposited or caused to be deposited by AXIS into a bank account which was maintained for the handling of trust funds, and thereafter from time-to-time AXIS made disbursements of said trust funds, identified as follows:

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BANK ACCOUNT # 1	
Bank Name and Location:	Union Bank of California, 4225 Genesee Ave., San Diego, CA 92117.
Account No.:	Last 4 Digits: 3405
Entitled:	“Axis Real Estate Incorporated dba Axis Real Estate and Mortgage Solutions”
Signatories:	Piers Windebank (REB/DO)
Purpose and Disposition of Account:	Used for deposits and disbursements of advance fees in connection with loan modifications. Account closed on March 19, 2010.

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

- (a) failed to properly designate Bank Account #1 as a trust account in the name of AXIS or its fictitious business name, as trustee, in violation of Section 10145 of the Code and Section 2832 of Title 10 of the California Code of Regulations (hereafter “the Regulations”);
- (b) failed to maintain complete and accurate records of all trust funds received and disbursed, for Bank Account #1, in violation of Section 10145 of the Code and Section 2831 of the Regulations;
- (c) failed to maintain complete and accurate separate records for each beneficiary of funds held in Bank Account #1, in violation of Section 10145(g) of the Code and Section 2831.1 of the Regulations;
- (d) failed to reconcile the total of separate beneficiary records with a control record on at least a monthly basis for Bank Account #1, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;
- (e) collected advance fees from principals for providing loan modification services, and did not provide an accounting to those principals showing

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1 the services rendered, identification of the trust account into which the
2 funds were deposited and details of how those funds were disbursed, in
3 violation of Section 10146 of the Code and Section 2972 of the
4 Regulations;

5 (f) collected advance fees from principals for providing loan modification
6 services, and deposited those funds into Bank Account #1 instead of
7 immediately depositing said funds into a designated trust account or
8 neutral escrow depository, in violation of Section 10146 of the Code;

9 (g) as to the advance fee agreements entered into with the borrowers
10 identified in Paragraph 11, above, AXIS failed to set forth the date on
11 which the advance fees would become due and payable, and failed to set
12 forth a definite date for full performance of the services promised under
13 the advance fee agreements, in violation of Sections 2970(b)(3) and
14 2970(b)(6) of the Regulations;

15 (h) failed to retain for three years copies of all listings, deposit receipts,
16 canceled checks, trust records, and/or other documents executed by
17 Respondents or obtained by Respondents in connection with loan
18 modification transactions, specifically records pertaining to the
19 submission of loan modification packages to lenders, correspondence
20 regarding renegotiation of mortgage terms with the lenders, and records
21 of updates to principals of loan modifications in process, all in violation
22 of Section 10148 of the Code; and

23 (i) employed and compensated Workman, who at no time was licensed as a
24 real estate salesperson or broker by the Department, for performing acts
25 requiring a real estate license including, but not limited to, soliciting

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1 borrowers and negotiating loan modifications and fees, in violation of
2 Sections 10130 and 10137 of the Code, in connection transactions
3 including, but not limited to the transactions identified in Paragraph 11,
4 above.

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6 The acts and/or omissions of AXIS as alleged in Paragraph 13, above, constitute
7 grounds for the suspension or revocation of all licenses and license rights of Respondent
8 pursuant to the following provisions of the Code and Regulations:

9 As to Paragraph 13(a), under Section 10177(d) and/or 10177(g) of the Code in
10 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

11 As to Paragraph 13(b), under Section 10177(d) and/or 10177(g) of the Code in
12 conjunction with Section 10145 of the Code and Section 2831 of the Regulations;

13 As to Paragraph 13(c), under Section 10177(d) and/or 10177(g) of the Code in
14 conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

15 As to Paragraph 13(d), under Section 10177(d) and/or 10177(g) of the Code in
16 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

17 As to Paragraph 13(e), under Section 10177(d) and/or 10177(g) of the Code in
18 conjunction with Section 10146 of the Code and Section 2972 of the Regulations;

19 As to Paragraph 13(f), under Section 10177(d) and/or 10177(g) of the Code in
20 conjunction with Section 10146 of the Code;

21 As to Paragraph 13(g), under Section 10177(d) and/or 10177(g) of the Code in
22 conjunction with Section 2970(b)(3) and 2970(b)(6) of the Regulations;

23 As to Paragraph 13(h), under Section 10177(d) and/or 10177(g) of the Code in
24 conjunction with Section 10148 of the Code; and,

25 As to Paragraph 13(i), under Section 10177(d) and/or 10177(g) of the Code in
26 conjunction with Sections 10130 and 10137 of the Code.

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The acts and/or omissions of AXIS as alleged in Paragraph 13, above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148 of the Code, in conjunction with Section 10145 of the Code.

SECOND CAUSE OF ACTION

(As Against WINDEBANK)

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

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At all times relevant herein, WINDEBANK, as the designated officer of AXIS, was required to exercise reasonable supervision and control over the activities of AXIS and its employees, including but not limited to Workman, pursuant to Section 10159.2 of the Code and Section 2725 of the Regulations.

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WINDEBANK failed to exercise reasonable supervision over the acts and/or omissions of AXIS and its employees, including but not limited to Workman, in such a manner as to allow the acts and/or omissions as described in Paragraph 13, above, to occur, which constitutes grounds for the suspension or revocation of the licenses and license rights of WINDEBANK under Sections 10177(d) and/or 10177(g) of the Code, and Section 10177(h) of the Code, in conjunction with Section 10159.2 of the Code and Section 2725 of the Regulations.

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 Administrative Law Judge to direct a licensee found to have committed a violation of this

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1 part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
2 case.

3 WHEREFORE, Complainant prays that a hearing be conducted on the
4 allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all
5 licenses and license rights of all Respondents named herein under the Real Estate Law (Part 1
6 of Division 4 of the Business and Professions Code), including all mortgage loan originator
7 license endorsements and license endorsement rights of Respondents under the Code, for the
8 cost of investigation and enforcement as permitted by law, and for such other and further relief
9 as may be proper under the provisions of law.

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12 VERONICA KILPATRICK
13 Deputy Real Estate Commissioner

14 Dated at San Diego, California,
15 this 3 day of May, 2012.
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