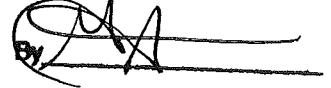


FILED

JUN 12 2013

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
CALWIDE REALTY, INC. and) No. H-4380 SD
)
MICHAEL FRANKLIN PALUBA,)
)
Respondents.)
_____)

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on November 14, 2012, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondents' express admissions, (2) affidavits, and (3) other evidence.

This Decision revokes a real estate license and/or license rights, and license endorsement and/or license endorsement rights, on grounds pursuant to Sections 10085.6 (Advance Fee Handling), 10145 (Trust Fund Handling), 10146 (Handling of Advance Fees as Trust Funds), 10148 (Record Retention), 10159.2 (Designated Officer-Broker Supervision), 10177(d) (Willful Disregard/Violation of Real Estate Law), 10177(g) (Negligence/Incompetence), 10177(h) (Broker Supervision), and 10177(q) (Unlawful Collection of Advance Fees) of the California Business and Professions Code, Sections 2725 (Broker Supervision), 2742(c) (Conducting Licensed Activities While Corporate License Suspended), 2831 (Maintaining Trust Fund Records), 2831.1 (Maintaining Separate Beneficiary Records), 2831.2 (Failure to Perform Trust Account Reconciliations), and 2832 (Designation of Trust Accounts) of Title 10 of the California Code of Regulations (hereinafter "the Regulations"), and Section 2945.4 (Advance Fees Prohibited for Loan Modifications) of the California Civil Code.

The right to reinstatement of a revoked real estate license is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondents.

FINDINGS OF FACT

1

On June 28, 2012, Veronica Kilpatrick made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, to Respondents' last known mailing addresses on file with the Department on July 18, 2012.

2

On November 14, 2012, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondents' defaults were entered herein.

3

Respondent CALWIDE REALTY INC., (hereinafter "CALWIDE"), is presently licensed by the Department of Real Estate (hereinafter "the Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereafter "the Code"), as a real estate corporation, acting by and through MICHAEL FRANKLIN PALUBA as its designated officer. At no time has the Department issued CALWIDE a mortgage loan originator license endorsement or license endorsement rights under the Code.

2

At all times relevant herein, CALWIDE had approximately thirty-three (33) fictitious business names registered with the Department, including "HOA Realty".

3

Respondent MICHAEL FRANKLIN PALUBA (hereinafter "PALUBA") 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.

4

At all times herein mentioned, PALUBA was licensed by the Department as the designated officer of CALWIDE. As the designated officer, PALUBA 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 CALWIDE for which a real estate license and mortgage loan originator endorsement is required.

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

At all times mentioned herein, CALWIDE engaged in the business of, acted in the capacity of, advertised, or assumed to act as a corporate real estate broker 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 CALWIDE 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 to Respondent CALWIDE)

Beginning on or about December 14, 2010, and continuing intermittently until April 29, 2011, an audit was conducted at Stone Coast Lane, Fallbrook, California, and the Department's Los Angeles and San Diego District Offices, wherein the Auditor examined CALWIDE's records for the period of November 1, 2009 through December 31, 2010 (hereinafter "the audit period").

While acting as a corporate real estate broker as described above, and within the audit period, CALWIDE 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 licensed activities described above, and within the audit period, CALWIDE engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees, which constitute trust funds, within the meaning of Sections 10026 and 10131.2 of the Code, including but not limited to the following:

<u>Borrower</u>	<u>Advance Fee</u>	<u>Date Received</u>
Andrew M.	\$1,200	10/29/10
Raul M.	\$1,600	10/18/10
Ramon D.	\$1,000	8/10/10
Nancy B.	\$1,500	6/5/10
Salvador C.	\$3,000	4/26/10 and 5/7/10
Armando G. and Marcella V.	\$1,500	4/26/10
Gladys W.	\$1,500	4/24/09
Claudia C.	\$1,500	4/19/10
Milton B.	\$1,200	10/6/10

The trust funds accepted or received by CALWIDE as described above, were deposited or caused to be deposited by CALWIDE into three bank accounts which were maintained for the handling of general business funds and trust funds, and thereafter from time-to-time CALWIDE made disbursements of said trust funds, identified as follows:

- (i) Bank Account #1: entitled "Calwide Realty-North Island Credit Union", bank name "North Island Credit Union", account ending in 5103.
- (ii) Bank Account #2: entitled "Calwide Home Loans", bank name "North Island Credit Union."
- (iii) Bank Account #3: entitled "HOA Realty", bank name "North Island Credit Union."

In the course of the licensed activities described above, and within the audit period, CALWIDE:

- (a) failed to properly designate Bank Accounts #1, #2 and #3 as trust accounts in the name of CALWIDE 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 records of all trust funds received and disbursed, for Bank Accounts #1, #2 and #3, in violation of Section 10145 of the Code and Section 2831 of the Regulations;
- (c) failed to maintain separate records for each beneficiary of funds held in Bank Accounts #1, #2 and #3, 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 Accounts #1, #2 and #3, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;

- (e) failed to retain for three years certain documents and records related to CALWIDE's loan modification activities, including but not limited to its general bank account statements, that were requested by the Auditor pursuant to a Subpoena Duces Tecum served upon PALUBA on January 6, 2011 and requiring production of said documents by January 20, 2011, in violation of Section 10148 of the Code;
- (f) engaged in business requiring a real estate license, including but not limited to providing loan modification services to consumers, while CALWIDE's corporate powers, rights, and privileges were suspended by the California Secretary of State, in violation of Section 2742(c) of the Regulations;
- (g) collected advance fees, trust funds, from principals for providing loan modification services, and deposited those funds into Bank Accounts #1, #2 and #3 instead of immediately depositing said funds into a designated trust account or neutral escrow depository, in violation of Sections 10145 and 10146 of the Code;
- (h) collected advance fees in connection with loan modification services after October 10, 2009, in violation of Section 10085.6 of the Code and Section 2945.4 of the California Civil Code (hereinafter "Civil Code"), for transactions, including but not limited to the following:

<u>Borrower</u>	<u>Advance Fee</u>	<u>Date Advance Fee Received</u>
Andrew M.	\$1,200	10/29/10
Raul M.	\$1,600	10/18/10
Ramon D.	\$1,000	8/10/10
Nancy B.	\$1,500	6/5/10
Salvador C.	\$3,000	4/26/10 and 5/7/10
Armando G. and		
Marcella V.	\$1,500	4/26/10
Claudia C.	\$1,500	4/19/10
Milton B.	\$1,200	10/6/10

Second Cause of Action
(As to Respondent PALUBA)

At all times relevant herein, PALUBA, as the designated officer of CALWIDE, was required to exercise reasonable supervision and control over the activities of CALWIDE and its employees pursuant to Section 10159.2 of the Code and Section 2725 of the Regulations.

PALUBA failed to exercise reasonable supervision over the acts and/or omissions of CALWIDE and its employees in such a manner as to allow the acts and/or omissions as described in the First Cause of Action, subparagraphs (a) through (h), above, to occur.

DETERMINATION OF ISSUES

1

Cause for disciplinary action against Respondent CALWIDE exists with reference to the acts and/or omissions of Respondent CALWIDE, identified above in the First Cause of Action, as follows:

- (i) As to subparagraph (a), under Section 10177(d) and 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2832 of the Regulations;
- (ii) As to subparagraph (b), under Section 10177(d) and 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2831 of the Regulations;
- (iii) As to subparagraph (c), under Section 10177(d) and 10177(g) of the Code in conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;
- (iv) As to subparagraph (d), under Section 10177(d) and 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;
- (v) As to subparagraph (e), under Section 10177(d) and 10177(g) of the Code in conjunction with Section 10148 of the Code;
- (vi) As to subparagraph (f), under Section 10177(d) and/or 10177(g) of the Code in conjunction with Section 2742(c) of the Regulations;
- (vii) As to subparagraph (g), under Section 10177(d) and 10177(g) of the Code in conjunction with Section 10145 and 10146 of the Code; and,
- (viii) As to subparagraph (h), under Section 10177(d), 10177(g), and 10177(q) of the Code, in conjunction with Section 10085.6 of the Code and Section 2945.4 of the Civil Code.

2

Cause for disciplinary action against Respondent PALUBA exists with reference to the acts and/or omissions of Respondent PALUBA, identified above in the Second Cause of Action, under Sections 10177(d), 10177(g) and 10177(h) of the Code, in conjunction with Section 10159.2 of the Code and Section 2725 of the Regulations.

3

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

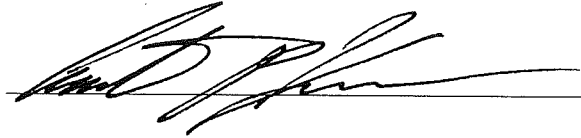
All licenses and licensing rights of Respondent CALWIDE REALTY, INC. under the provisions of Part I of Division 4 of the Business and Professions Code are REVOKED,

All licenses and licensing rights, and all license endorsements and license endorsement rights of Respondent MICHAEL FRANKLIN PALUBA under the provisions of Part I of Division 4 of the Business and Professions Code are REVOKED.

This Decision shall become effective at 12 o'clock noon on **JUL 03 2013**

DATED: 1/8/13

Real Estate Commissioner



1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

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DEPARTMENT OF REAL ESTATE
By *R. Mat*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 ***

11
12 In the Matter of the Accusation of

13 CALWIDE REALTY, INC. and
14 MICHAEL FRANKLIN PALUBA,
15 Respondents.

No. H-4380 SD

DEFAULT ORDER

16 Respondents, CALWIDE REALTY, INC. and MICHAEL FRANKLIN
17 PALUBA, having failed to file a Notice of Defense within the time required by Section 11506
18 of the Government Code, are now in default. It is, therefore, ordered that a default be entered
19 on the record in this matter as to Respondents CALWIDE REALTY, INC. and MICHAEL
20 FRANKLIN PALUBA.

21 IT IS SO ORDERED *November 8, 2012*, 2012.

22 REAL ESTATE COMMISSIONER

23
24
25 By:

Dolores Weeks

26 DOLORES WEEKS
27 Southern Regional Manager