

**FILED**

**August 23, 2012**

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DEPARTMENT OF REAL ESTATE

By L. Jones

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

No. H-4403 SD

12 CC&I, INC., PIDA KONGPHOUTHONE, )  
13 RICHARD THEODORE MORING, JR., )  
14 and GEORGINA HERNANDEZ, )

ACCUSATION

15 Respondents. )

16 The Complainant, TRICIA SOMMERS, a Deputy Real Estate Commissioner of  
17 the State of California, for cause of Accusation against CC&I, INC., PIDA  
18 KONGPHOUTHONE, RICHARD THEODORE MORING, JR., and GEORGINA  
19 HERNANDEZ (Respondents), is informed and alleges as follows:

20 PRELIMINARY ALLEGATIONS

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22 The Complainant makes this Accusation in her official capacity.

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24 Respondents are presently licensed and/or have license rights under the Real  
25 Estate Law, Part 1 of Division 4 of the Business and Professions Code (the Code).

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2 At all times mentioned, Respondent CC&I, INC. (CCI), was and is licensed by the  
3 State of California Department of Real Estate (the Department) as a corporate real estate broker.

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5 At all times mentioned, Respondent PIDA KONGPHOUTHONE (PIDA), was  
6 and is licensed by the Department individually as a real estate broker, and until February 22,  
7 2010 was licensed as the designated officer of CCI. As said designated officer, PIDA was  
8 responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the  
9 agents, real estate licensees and employees of CCI for which a real estate license is required.

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11 At all times mentioned, Respondent RICHARD THEODORE MORING, JR.  
12 (MORING), was and is licensed by the Department as a real estate salesperson until August 9,  
13 2010, and individually as a real estate broker on and after August 10, 2010.

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15 At all times mentioned, Respondent GEORGINA HERNANDEZ  
16 (HERNANDEZ), was and is licensed by the Department as a real estate salesperson with Mar  
17 Financial, Inc. as her employing broker.

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19 At no time mentioned was Mark Allen White (White), Michelle J. Peters (Peters),  
20 or Larry Messick (Messick) licensed by the Department in any capacity.

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

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At all times mentioned, Respondents 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 (the operation and conduct of a mortgage loan brokerage business with the public, for or in expectation of compensation, and soliciting borrowers or lenders and/or negotiating loans and/or performing services for borrowers or lenders in connection with loans secured directly or collaterally by liens on real property).

FIRST CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 9, inclusive, above, are incorporated by this reference as if fully set forth herein.

In connection with the operation and conduct of the real estate activities described in Paragraph 9, CCI engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees within the meaning of sections 10026 and 10131.2 (advance fee) of the Code including, but not limited to, the following transactions:

<b>Borrower</b>	<b>(approx.) Date</b>	<b>Amount</b>
Nori N.	9/02/09	\$3,000
Melodee R.	8/28/09	\$3,000
Vuey and Amy P.	3/23/09	\$1,500
Phonephet and Jaem S.	9/03/09	\$595
Luan*****	10/18/10	\$3,000

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In connection with the collection and handling of the advance fees set out above,  
CCI:

a. Failed to cause the advance fee contract and all materials used in obtaining the advance fee agreements to be submitted to the Department of Real Estate prior to use as required by section 10085 of the Code and section 2970 of Title 10, California Code of Regulations (the Regulations). A "no objection" letter from the Department for the charging or collection of advance fees was first issued to CCI on August 19, 2009. Beginning October 11, 2009, the charging or collection of advance fees for loan modification services was prohibited by section 2944.7 of the Civil Code.

b. Failed to maintain records of the trust funds taken from borrowers for loan modification services, in violation of section 10146 of the Code.

The acts and/or omissions of CCI described in the First Cause of Action, violated sections 10085 and 10146 of the Code and sections 2830, 2831, 2831.1, 2831.2, 2832.1, 2970, and 2972 of the Regulations, and are grounds for the suspension or revocation of CCI's license and license rights under section 10177(d) and 10176(i) of the Code.

SECOND CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 13, inclusive, above, is incorporated by this reference as if fully set forth herein.

Beginning in approximately January 2009 and continuing through approximately June 2011, CCI employed and/or compensated White, Peters, and Messick to solicit and/or negotiate loans for borrowers and/or lenders in connection with loans secured by real property, as set out below, without first being licensed by the Department as either real estate salespersons or brokers, for or in expectation of compensation:

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<b>Property Address</b>	<b>Borrower</b>
9540 Eucalyptus St, Spring Valley, CA	Nori F.
8769 Spring Canyon, Spring Valley, CA	Melodee R.
Unknown	Cynthia M.
Unknown	Josh S.
Unknown	Cliff S.

16

The acts and/or omissions of CCI as alleged in Paragraphs 14 and 15 are grounds for discipline under Section 10137 of the Code.

THIRD CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 16, inclusive, above, is incorporated by this reference as if fully set forth herein.

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From approximately January 14, 2011, through February 28, 2011, the Department conducted an audit of CCI's real estate brokerage for the period of January 1, 2008, to November 30, 2010, as set forth in Audit No. SD100002 dated February 28, 2011. During the course of the loan modification transactions described above, CCI received funds from borrowers, paid in advance, for loan modification services to be rendered by Respondents.

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The following facts were ascertained by the audit for the period referred to above.

- a. At all times mentioned herein, White was the CEO and President of CCI; PIDA was the CFO, Treasurer, and Secretary of CCI; and both White and PIDA were 50% shareholders of CCI.

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1           b.     CCI did not maintain or retain bank statements or trust account records for  
2 its loan modification activities, and therefore, the Department's auditor was unable to reconcile  
3 CCI's trust accounts received and disbursed, or to determine CCI's accountability for trust funds  
4 received in connection with its loan modification activities.

5           c.     On approximately August 10, 2009, CCI submitted a proposed advance  
6 fee agreement to the Department to obtain a "no objection" letter as to that agreement. On  
7 approximately August 19, 2009, the Department issued a "no objection" letter to CCI for its use  
8 of the submitted advance fee agreement. Respondents had a log of 31 loan modification  
9 transactions performed by CCI or its agents and employees. Of those 31 transactions, the  
10 advance fee agreement CCI submitted to the Department was used in only 8 transactions.  
11 Respondents did not provide the Department's auditor with copies of any advance fee agreements  
12 used by CCI in connection with its loan modification transactions.

13           d.     Within three years of the date of this Accusation, CCI collected \$75,865 in  
14 fees from borrowers for loan modification transactions, and at least \$69,615 of that amount was  
15 collected during the time period that PIDA was the designated officer of CCI; and of that  
16 \$69,615, \$62,115 was collected in advance of services performed.

17           e.     Within three years of the date of this Accusation, CCI collected \$57,565  
18 from borrowers as loan modification fees prior to the Department's issuance of its "no objection"  
19 letter to CCI, and of that amount, \$52,065 was collected in advance of services performed.

20           f.     Effective October 11, 2009, SB 94 made it illegal for anyone to charge or  
21 collect an advance fee for loan modification services. Between October 11, 2009, and September  
22 28, 2010, CCI collected at least \$6,000 in advance fees for loan modification transactions, of  
23 which amount \$2,750 was collected during the period of time that PIDA was the designated  
24 officer of CCI.

25           g.     The Department's auditor served CCI with a subpoena duces tecum on  
26 approximately December 22, 2010. CCI failed to maintain transactional files for loan  
27 modification transactions for 3 years from the close of the transaction, as required by section

1 10148 of the Code, including files for the Figueroa, Mead, and Martinez transactions. The  
2 records requested in the subpoena were never delivered or made available to the Department, in  
3 violation of its subpoena.

4 h. CCI failed to maintain records of all trust funds received, as required under  
5 section 2831 of the Regulations.

6 i. CCI failed to maintain separate records for each beneficiary of trust funds  
7 in its trust account, required under section 2831.1 of the Regulations.

8 j. CCI failed to reconcile a control record with separate beneficiary records,  
9 as described above, at least once each month, as required under section 2831.2 of the  
10 Regulations.

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12 The acts and/or omissions of CCI as alleged in the Third Cause of Action  
13 constitute grounds for disciplinary action under the following provisions:

14 a. As to Paragraph 19(b) and (g), under section 10148 of the Code in  
15 conjunction with section 10177(d) of the Code;

16 b. As to Paragraph 19(c), (d), (e), and (f), under sections 10085 and 10148 of  
17 the Code and section 2970 of the Regulations in conjunction with section 10177(d) of the Code;  
18 and sections 2944.7 and 2945.4 of the Civil Code in conjunction with section 10177(q) of the  
19 Code;

20 c. As to Paragraph 19(h), under section 2831 of the Regulations in  
21 conjunction with section 10177(d) of the Code;

22 d. As to Paragraph 19(i), under section 2831.1 of the Regulations in  
23 conjunction with section 10177(d) of the Code;

24 e. As to Paragraph 19(j), under Section 2831.2 of the Regulations in  
25 conjunction with section 10177(d) of the Code.

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1 FOURTH CAUSE OF ACTION

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

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6 Within the last three years, PIDA failed to exercise reasonable supervision over  
7 the activities of CCI for which a real estate license is required. In particular, PIDA permitted  
8 and/or ratified the conduct described in the First through the Third Causes of Action and/or  
9 failed to take reasonable steps to implement effective supervision that would have prevented  
10 those acts and/or omissions, including policies, rules, and procedures to oversee and manage the  
11 employment of personnel to act in any capacity requiring a real estate license; and the  
12 establishment of systems for monitoring compliance with such policies, rules, procedures, and  
13 systems, to ensure compliance by CCI with the Real Estate Law.

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15 The acts and/or omissions of PIDA described above violate section 10159.2 of the  
16 Code and section 2725 of the Regulations and are grounds for the revocation or suspension of his  
17 licenses under Section 10177 (d) and (h) of the Code.

18 FIFTH CAUSE OF ACTION

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20 Effective October 1, 2008, CCI's corporate rights, powers, and privileges were suspended  
21 by the California Franchise Tax Board pursuant to the Revenue and Taxation Code.

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23 The acts and/or omissions of CCI described above violate section 2742(c) of the  
24 Regulations and are grounds for the revocation or suspension of its licenses under Section 10177  
25 (d) of the Code.

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

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

  
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TRICIA SOMMERS  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 23rd day of August, 2012