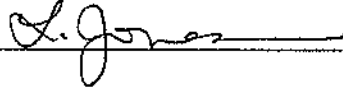


FILED

September 10, 2012

DEPARTMENT OF REAL ESTATE

By 

1 John Van Driel, Counsel
2 State Bar No. 84056
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0787

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 CC&I, INC. and)
13 PIDA KONGPHOUTHONE,)
14 Respondents.)

No. H-4403 SD
FIRST AMENDED
ACCUSATION

15
16 The Complainant, TRICIA SOMMERS, a Deputy Real Estate Commissioner of
17 the State of California, for cause of Accusation against CC&I, INC. and PIDA
18 KONGPHOUTHONE, (Respondents), is informed and alleges as follows:

19 PRELIMINARY ALLEGATIONS

20 1

21 The Complainant makes this Accusation in her official capacity.

22 2

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

25 ///

26 ///

27 ///

1 3

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.

4 4

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.

10 5

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

13 6

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

19 7

20 At all times mentioned, Respondents engaged in the business of, acted in the
21 capacity of, advertised or assumed to act as real estate brokers in the State of California within
22 the meaning of section 10131(d) of the Code (the operation and conduct of a mortgage loan
23 brokerage business with the public, for or in expectation of compensation, and soliciting
24 borrowers or lenders and/or negotiating loans and/or performing services for borrowers or
25 lenders in connection with loans secured directly or collaterally by liens on real property).

26 ///

27 ///

1 FIRST CAUSE OF ACTION

2 8

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

5 9

6 In connection with the operation and conduct of the real estate activities
7 described in Paragraph 7, CCI engaged in the business of claiming, demanding, charging,
8 receiving, collecting or contracting for the collection of advance fees within the meaning of
9 sections 10026 and 10131.2 (advance fee) of the Code including but not limited to the following
10 transactions:

11

Borrower	(approx.) Date	Amount
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

12
13
14
15

16 10

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

19 a. Failed to cause the advance fee contract and all materials used in obtaining
20 the advance fee agreements to be submitted to the Department of Real Estate prior to use as
21 required by section 10085 of the Code and section 2970 of Title 10, California Code of
22 Regulations (the Regulations). A "no objection" letter from the Department for the charging or
23 collection of advance fees was first issued to CCI on August 19, 2009. Beginning October 11,
24 2009, the charging or collection of advance fees for loan modification services was prohibited by
25 section 2944.7 of the Civil Code.

26 b. Failed to maintain records of the trust funds taken from borrowers for loan
27 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 11, 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:

Property Address	Borrower
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.

The acts and/or omissions of CCI as alleged in Paragraphs 12 and 13 are grounds for discipline under Section 10137 of the Code.

///

///

///

1 THIRD CAUSE OF ACTION

2 15

3 Each and every allegation in Paragraphs 1 through 14, inclusive, above, is
4 incorporated by this reference as if fully set forth herein.

5 16

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

11 17

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

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

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

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

1 d. Within three years of the date of this Accusation, CCI collected \$75,865 in
2 fees from borrowers for loan modification transactions, and at least \$69,615 of that amount was
3 collected during the time period that PIDA was the designated officer of CCI; and of that
4 \$69,615, \$62,115 was collected in advance of services performed.

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

8 f. Effective October 11, 2009, SB 94 made it illegal for anyone to charge or
9 collect an advance fee for loan modification services. Between October 11, 2009, and September
10 28, 2010, CCI collected at least \$6,000 in advance fees for loan modification transactions, of
11 which amount \$2,750 was collected during the period of time that PIDA was the designated
12 officer of CCI.

13 g. The Department's auditor served CCI with a subpoena duces tecum on
14 approximately December 22, 2010. CCI failed to maintain transactional files for loan
15 modification transactions for 3 years from the close of the transaction, as required by section
16 10148 of the Code, including files for the Figueroa, Mead, and Martinez transactions. The
17 records requested in the subpoena were never delivered or made available to the Department, in
18 violation of its subpoena.

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

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

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

26 ///

27 ///

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

a. As to Paragraph 17(b) and (g), under section 10148 of the Code in conjunction with section 10177(d) of the Code;

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

c. As to Paragraph 17(h), under section 2831 of the Regulations in conjunction with section 10177(d) of the Code;

d. As to Paragraph 17(i), under section 2831.1 of the Regulations in conjunction with section 10177(d) of the Code;

e. As to Paragraph 17(j), under Section 2831.2 of the Regulations in conjunction with section 10177(d) of the Code;

FOURTH CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 18, inclusive, above, is incorporated by this reference as if fully set forth herein.

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

1 systems, to ensure compliance by CCI with the Real Estate Law.

2 21

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

6 FIFTH CAUSE OF ACTION

7 22

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

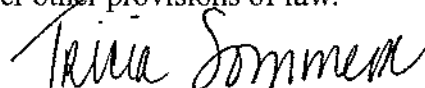
10 23

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

14 COST RECOVERY

15 Section 10106 of the Code provides, in pertinent part, that in any order issued in
16 resolution of a disciplinary proceeding before the department, the commissioner may request the
17 administrative law judge to direct a licensee found to have committed a violation of this part to
18 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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

24 

25 TRICIA SOMMERS
26 Deputy Real Estate Commissioner

27 Dated at Sacramento, California,
this 5th day of September, 2012