

FILED

January 27, 2014

BUREAU OF REAL ESTATE



By _____

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Bureau of Real Estate
3 P. O. Box 137007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 263-8670
6 (916) 263-8679 (Direct)
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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

10 In the Matter of the Accusation of)
11)
12 YOLANDA GOYENECHEA,)
13 Respondent.)

No. H-6003 SAC
FIRST AMENDED
ACCUSATION

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15 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
16 of the State of California, for Accusation against YOLANDA GOYENECHEA (Respondent), is
17 informed and alleges as follows:

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19 The Complainant makes this Accusation against Respondent in her official
20 capacity.

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22 At all times mentioned herein Respondent was licensed by the Department as a
23 real estate salesperson. At no times mentioned herein was Respondent licensed by the
24 Department as a real estate broker.

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26 At all times mentioned herein, Respondent engaged in, the business of, acted in
27 the capacity of, or assumed to act as a real estate broker within the State of California within the

1 meaning of Section 10131(d) of the Code, including solicitation of borrowers for or negotiation
2 of loans or performance of services for borrowers or lenders or note owners in connection with
3 loans secured directly or collaterally by liens on real property, including but not limited to direct
4 solicitation as described above of individual mortgage borrowers whose names are set forth
5 below.

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7 At no time mentioned herein did Respondent have a no objection letter regarding
8 any materials or contract for advance fees as required by Section 10085 of the Code.

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10 At all times mentioned herein, Respondent advertised and otherwise solicited
11 members of the public, who did not have a social security number, to hire her to assist them in
12 purchasing a residence. Respondent represented to her clients that they would be approved for a
13 mortgage through the Neighborhood Assistance Corporation of America (NACA).

14 FIRST CAUSE OF ACTION

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16 On or about July 7, 2011, Respondent collected an advance fee payment of
17 \$845.00 from Alfonso M. and Lyna D. (Buyers A) to help them find a house with a zero down
18 payment under the NACA program. Respondent advised Buyers A that they would have to pay
19 another \$845.00 at a later date. Buyers A did not ask for financial advice services which
20 Respondent represented were required in order to obtain assistance in buying a residence.

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22 Respondent failed to assist Buyers A with the purchase of a residence.

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24 Respondent failed to provide financial advice services to Buyers A.

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26 Respondent failed to refund the fees to Buyers A.

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The representations that Respondent made in Paragraph 6, above were untrue and Respondent knew them to be untrue at the time and were made for the purpose of causing Buyers A to pay her fees.

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The acts of Respondent, described above, constitute violations of Sections 10085 (No Objection Letter), 10085.5 (Advanced Fees) and Section 10131 (Broker Activity) and are grounds for discipline under Sections 10176 (a) (Substantial Misrepresentation), 10176(b) (False Promises to Induce) , 10176(i) (Other conduct Fraud or Dishonest Dealing), 10177(d) (Willful/Disregard Real Estate Law) and 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

SECOND CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 11, above, and incorporates the same, herein by reference.

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In or around July, 2011, Respondent collected an advance fee payment of \$412.00 from Gloria Y. and Edgar P, (Buyers B) to assist them in purchasing a residence. Respondent represented to Buyers B that they would have to take four (4) financial advice classes, for a total cost of \$1,600.00. Buyers B agreed to pay the remaining balance of \$1,188.00 at a later date.

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Respondent failed to assist Buyers B with the purchase of a residence.

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Respondent failed to provide financial advice services to Buyers B.

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Respondent failed to refund the fees to Buyers B.

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The representations that Respondent made in Paragraph 13, above, were untrue and Respondent knew them to be untrue at the time and were made for the purpose of causing Buyers B to pay them fees.

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The acts of Respondent, described above, constitute violations of Sections 10085 (No Objection Letter), 10085.5 (Advanced Fees) and Section 10131 (Broker Activity) and are grounds for discipline under Sections 10176 (a) (Substantial Misrepresentation), 10176(b) (False Promises to Induce) , 10176(i) (Other conduct Fraud or Dishonest Dealing), 10177(d) (Willful/Disregard Real Estate Law) and 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

THIRD CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 18, above, and incorporates the same, herein by reference.

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In or about November 2010, Daniel S. read one of Respondent's advertisements in a publication known as "d'Primera Mano" regarding assistance with obtaining a mortgage loan.

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In or about November 2010, Daniel S. met with Respondent regarding retaining Respondent to assist him in obtaining a mortgage loan.

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At the meeting referred to above, Respondent represented to Daniel S. that she worked directly with NACA and that enabled her to obtain a mortgage loan for Daniel S.

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Respondent requested that Daniel S. pay her \$1,650.00 for her services in obtaining a mortgage loan for him. \$825.00 was due immediately and another \$825.00 was due on January 27, 2011. Daniel S. paid Respondent \$825.00 on December 20, 2010.

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Daniel S. did not sign any contract with Respondent, but signed a note that set forth the payments due.

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When Respondent asked Daniel S. for his NACA identification, he became suspicious of Respondent and decided to not pay the additional \$825.00 due on January 27, 2011. Respondent did not obtain a mortgage loan for Daniel S. nor did she refund his \$825.00, despite his request that she do so.

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The acts of Respondent, described in Paragraphs 20 through 25, above, constitute violations of Sections 10085 (No Objection Letter), 10085.5 (Advanced Fees) and Section 10131 (Broker Activity) and are grounds for discipline under Sections 10176 (a) (Substantial Misrepresentation), 10176(b) (False Promises to Induce) , 10176(i) (Other conduct Fraud or Dishonest Dealing), 10177(d) (Willful/Disregard Real Estate Law) and 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

COST RECOVERY

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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.

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



TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 27th day of January, 2014.